United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

BRIEF FOR APPELLANT AND JOINT APPENDIX

United States Court of Appeals
for the District of Columbia

FILED AUG 14 1945

Joseph W. Stewart

IN THE

United States Court of Appeals

DISTRICT OF COLUMBIA.

No. 9053 354

KARL KINDLEBERGER, ADMINISTRATOR OF THE ESTATE OF JULIA C. BUCKLEY, *Appellant,*

v.

LINCOLN NATIONAL BANK OF WASHINGTON, ET AL., EXECUTORS OF THE ESTATE OF MICHAEL E. BUCKLEY, *Appellees.*

Appeal from the District Court of the United States for the District of Columbia.

LESLIE C. GARNETT,

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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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Appeal from the District Court of the United States for the District of Columbia.

BRIEF FOR THE APPELLANT.

JURISDICTIONAL STATEMENT.

This is an appeal from a final judgment of the District Court of the United States for the District of Columbia, entered on the 15th day of May, 1945, dismissing the complaint of the appellant as Administrator of the estate of Julia C. Buckley, beneficiary, to recover the proceeds of two life insurance policies on the life of her husband, Michael E. Buckley, deceased, the proceeds of which in the sums of $11,370.20 and $5,685.11, were held by the Appellees, as Executors of the estate of said Michael E. Buckley, subject to a final determination of whether the said sum formed a part of the assets of the estate of said Michael E. Buckley, insured, or part of the assets of the estate of Julia C. Buckley, the beneficiary. This appeal was taken on the 6th day of June, 1945, under the provisions of Title 17, Section 101 of the Code of Laws of the District of Columbia for 1940 and Rule 10 (a) of this Court.

STATEMENT OF THE CASE.

In 1924, the New York Life Insurance Company issued two policies on the life of Michael E. Buckley, in each of which his wife, Julia C. Buckley, was named beneficiary. A copy of each policy is attached as exhibit to the complaint (App. 5, 9). Julia C. Buckley died in 1935 and the appellant qualified as Administrator of her estate. Michael E. Buckley died in 1943 without having made any change in the beneficiary in either of the policies except that he pledged one policy for a loan, which has long since been paid off and discharged (App. 3). The Appellees qualified as Executors under the will of Michael E. Buckley and the proceeds of these policies were paid to them under agreement that the money would be held by them, subject to the determination of this cause (App. 3). Each of the policies contained the following provisions:

> "The insured may at any time and from time to time change the beneficiary, provided this policy is not then assigned."

> "In event of the death of any beneficiary before the insured, the interest of such beneficiary shall vest in the insured unless otherwise provided herein." (App. 7, 11)

The complaint filed by the Administrator of the estate of Julia C. Buckley asserts that she as the named beneficiary, had a vested interest in the policies of insurance subject to be defeated only by the exercise of the reserved power of the insured to change the beneficiary, which power was not exercised and therefore, upon the death of the insured the proceeds of these policies were assets to which the personal representative of the beneficiary named in the policies was entitled under the laws of the District of Columbia (App. 2-4). The appellees filed a Motion to dismiss the complaint as failing to state a claim against the defendants for which relief could be granted and the Court below entered an order dismissing the complaint (App. 13).

QUESTION PRESENTED.

The beneficiary, the wife, predeceased the insured, the husband. No change of beneficiary was made by the husband. At his death, the wife was the named beneficiary in the policies. The sole question presented by the record therefore is whether under the law of the District of Columbia, the wife had a vested interest in these polices which inured to her estate or whether under the reservation of the right to change the beneficiary and the provision that in the event the beneficiary should predecease the insured her interests should vest in the insured, the personal representatives of the husband's estate or the personal representative of the wife's estate is entitled to the proceeds of the policies.

THE STATUTES INVOLVED.

For the convenience of the Court, we here insert the pertinent statutes (D. C. Code, 1940):

"30-213 (14:48). Insurance for benefit of wife, children, dependent relative, or creditor not liable for husband's debts.

All policies of life insurance upon the life of any person maturing on or after January 1, 1902, and which have been or shall be taken out for the benefit of or bona fide assigned to the wife or children of or any relative dependent upon such person, or any creditor, shall be vested in such wife or children or other relative or creditor, free and clear from all claims of the creditors of such insured person. (Mar. 3, 1901, 31 Stat. 1375, ch. 854, PP. 1162.)"

"30-214 (14:49). Insurance payable on death of wife to children, descendants, or her representatives.

If the wife shall die before her husband, the amount of such insurance may be payable after her death to the children or descendants for their use, and to their guardian if under age; and if there be no children or descendants of the wife living at the time of her death, to her legal representatives. (Mar. 3, 1901, 31 Stat. 1375, ch. 854, PP. 1163.)"

"35-716 (5:220$_6$). Rights of creditors and beneficiaries under policies of life insurance.

When a policy of insurance, whether heretofore or hereafter issued, is effected by any person on his own life or on another life in favor of some person other than himself having an insurable interest therein, or except in cases of transfer with intent to defraud creditors, if a policy of life insurance is assigned or in any way made payable to any such person, the lawful beneficiary or assignee thereof (other than the insured or the person so effecting such insurance) or his executors or administrators, shall be entitled to its proceeds and avail against the creditors and representatives of the insured and of the person effecting such insurance whether or not the right to change the beneficiary is reserved or permitted, and whether or not the policy is made payable to the person whose life is insured, if the beneficiary or assignee shall predecease such person * * *. (June 19, 1934, 48 Stat. 1175, ch. 672, PP. 16, ch. V.)"

SUMMARY OF ARGUMENT.

1. The Act of March 3, 1901 (Title 30, Section 213 and 214 of the District of Columbia Code of 1940) specifically provides that all policies of life insurance taken out for the benefit of a wife

> "shall be vested in such wife * * * free and clear of all claim of creditors of such insured person."

The terms of the contract in which the company induced the insured to enter are controlled by this Statute.

2. The Act of June 19, 1934 (Title 35, Section 716 of the District of Columbia Code of 1940) specifically provides that the personal representative of the beneficiary in a policy of insurance "whether heretofore or hereafter issued" shall be entitled to the proceeds of such insurance whether or not the right to change the beneficiary is reserved and whether or not the policy is made payable to the insured if the beneficiary shall predecease the insured.

(a) The reservations in these policies of the right to change the beneficiary and that the policies should be payable to the insured, if the beneficiary shall predecease the insured, did not divest the wife of her vested right or affect the right of her personal representative to their proceeds.

3. The force and effect of these two Statutes are to create a vested interest in the wife and such insurance policies can only be divested by the exercise by the insured of the right to change the beneficiary and this right was not exercised by him.

4. Aside from the provisions of the Act of March 3, 1901, in force when these policies were written, which provides that all policies issued upon the life of the husband for the benefit of the wife shall be vested in her, the Act of June 19, 1934 operated prospectively upon the proceeds of these policies and not retroactively, and no existing right of the insured is disturbed in providing for the disposition of such proceeds after maturity.

5. Even if the Act of June 19, 1934 could be said to be retroactive in its operation Congress had full power to enact it for the wife's right to the proceeds of these policies does not rest upon contract but upon legislative grant.

6. The statute is clear and unambiguous and there is no need for construction. The statute provides that the personal representative of a named beneficiary in any policy of insurance shall be entitled to the proceeds of such insurance regardless of the reservation of any unexercised right to change the beneficiary and of any provision in the policy that if the named beneficiary predeceases the insured her interest should vest in the insured.

ARGUMENT.

1. The terms of the contracts in which the companies induced the insured to enter are controlled by the laws of the District of Columbia.

It is well settled that contracts of life insurance are subject to the laws of the domicil of the insured and in any conflict between the insurance contract and the statute, the contract must yield to the statute.

New York Life Insurance Company v. *Cravens*, 178 U. S. 389.
Equitable Life Assurance Society v. *Clements*, 140 U. S. 226.
Orient Insurance Company v. *Baggs*, 172 U. S. 557.

If as contended for the appellees below the contract was not intended to give the wife a vested interest in these policies, it was as said in the Cravens case, *supra* (p. 399), "an ineffectual attempt to evade and nullify the clear words of the statute."

2. The reservations in these policies of the right to change the beneficiary and that the policies should be payable to the insured if the beneficiary shall predecease the in-

sured did not divest the wife of her vested right or affect the right of her personal representative to their proceeds.

The Act of March 3, 1901 expressly applies to all policies maturing after 1902. The Act of June 19, 1934 applies to all policies "whether heretofore or hereafter issued." No exception is made in the prior statute of policies reserving the right to change the beneficiary and with a reversion to the insured contingent upon the wife predeceasing the insured, and the subsequent statute specifically nullifies any provision in the policy which attempts to confine the wife's interest to an expectant estate rather than a vested right.

Prior to the enactment of these statutes the prevailing rule in the construction of policies with such reservation was that the wife had only an expectant estate in such policies, and these statutes were passed to cure this evil and to protect the family against the creditors of the insured.

In *Cohen* v. *Samuels,* 345 U. S. 50, it was held that in a policy of insurance held by a bankrupt the cash surrender value at the time the adjudication became an asset of the Trustees, even when the policy was payable to a beneficiary other than the bankrupt where there was a reserved power to change the beneficiary, on the ground that the beneficiary had only an expectant estate. This case arose in New York, but subsequently the New York legislature enacted Section 55(a) of the Insurance Code of New York identical in terms with the Act of June 19, 1934 above set out. *In re: Messenger,* 29 Fed. 2d 158, 68 ALR 1205, the question arose under this Statute as to the interests of the wife in a life insurance policy in which she was beneficiary when the insured became bankrupt. Judge Hand wrote the opinion of the Court and held that except as to creditors whose right accrued prior to the passage of the Act, the wife had a vested interest in the cash surrender value of the policy which could not be attacked by his creditors, even though there was a provision in the policy reserving his right to change the beneficiary.

In discussing the Statute the Court said that it prevented the creditor from affecting the rights of the beneficiary. The Court cites there the case of *In re: Weick,* 2 Fed. (2d) 647, where it was held that the Trustee in Bankruptcy was not allowed to obtain the surrender value of the policy "so long as there was no change in the beneficiary." Judge Hand also discussed *Cohen* v. *Samuels, supra,* to the effect that cash surrender value was an asset which passed to the Trustee and pointed out that this was prior to the enactment of the provisions of the insurance law above cited.

Judge Hand also referred to the decision of his own Court *In Re: Greenberg,* 271 Fed. 258, which had followed *Cohen* v. *Samuels,* in the holding that the beneficiary had only an expectant estate where there was a right reserved to change the beneficiary and pointed out that this case was decided prior to the enactment of Section 55(a). Judge Hand's opinion therefore clearly supports the vested right of the wife in this case regardless of the reserved right to change the beneficiary.

Colorado has adopted in its insurance code practically the identical terms of the Act of 1934 and this Act was construed for the Circuit Court of Appeals of the Tenth Circuit in *Cannon* v. *Nicholas,* 80 Fed. 2d 934. In that case the suit was by Mrs. Cannon, the beneficiary in two policies issued on the life of Mr. Cannon. By the terms of one policy, the proceeds were to be paid to her if her husband died before 1936, otherwise to him. The other policy was a straight life policy with Mrs. Cannon as the beneficiary, reserving the right in Cannon to revoke or change the beneficiary in both policies. Mrs. Cannon contended that under the Colorado decisions she was the owner of these policies and her property could not be subjected to the payment of her husband's taxes. After reviewing the Colorado decisions and citing *In Re: Messenger, supra,* the court declared that in Colorado a beneficiary has a property interest in a policy of life insurance, not subject to the sale for her husband's taxes, and therefore enjoined the effort

to sell the entire policy, including Mrs. Cannon's interest therein, as recognized by the Colorado law.

Boiled down to its bare bones, the 1934 statute expressly provides that the lawful beneficiary to whom a policy of insurance is payable, or if he be dead, his executor or administrator, shall be entitled to the proceeds of such policy against the creditors or representatives of the insured although the right to change the beneficiary is reserved and the policy is made payable to the insured if the beneficiary predeceases the insured. The language is clear and unambiguous.

So far as Mrs. Buckley's rights are concerned, the 1934 Act but confirms her vested right to these policies, and expressly prohibits, what was theretofore impliedly prohibited, any agreement between the company and the insured to limit by reservation her vested right, or, so long as at the death of the insured she remained the beneficiary, her inheritable estate. If the decision below is affirmed, it means that the creditors of the insured prevail over the rights of the wife and her children and that the Statutes designed to protect the family is wholly nullified.

3. Aside from the provisions of the Act of March 3, 1901, before these policies were written, no existing right of the insured is disturbed by the Act of June 19, 1934, in providing for the disposition of the proceeds of these policies after maturity.

It was argued for the appellees in the Court below that the insured had a valuable vested right in the policies which remains such until his death and that a legislative attempt to change this right would not withstand a constitutional challenge.

This Act affects pre-existing but unmatured policies and thus is effective *in futuro* and protects the insurance fund created by the annual appropriations and premiums paid by the husband for the benefit of his wife. Therefore it is only retrospective in that it applies to pre-existing

policies and perspective in that it protects the proceeds of these policies after they are matured, for the insurance fund is created by annual appropriation by the husband both before and after the Statute for the benefit of the wife.

The Statute does not impair the obligation of the contract because the wife's vested right in these policies does not rest upon contract but upon legislative grant. In New York it has been expressly held that the legislature had the right to apply an identical Statute to pre-existing policies without affecting pre-existing creditors.

In *Addiss* v. *Selig,* 264 N. Y. 274, 190 N. E. 490, 92 ALR 1384, the Court held that Section 55(a), identical with the 1934 Act, did not apply in the case of creditors whose claims were in existence at the time of the enactment of the statute, and said (p. 1386):

> "Note must be taken of the phraseology of the section. It makes no reference to pre-existing creditors although it does apply to a policy of insurance theretofore issued. This statute may be read so as *to apply to pre-existing policies* without affecting pre-existing creditors." (Italics supplied.)

Here the court held that no reference having been made to pre-existing claims, as to them the statute would not be given a retroactive effect, but that it did expressly apply to pre-existing policies, and quoted and cited:

> *In Matter of Thompson,* 184 N. Y. 36, 40, 76 N. E. 870, 871.
> *Kittell* v. *Domeyer,* 175 N. Y. 205, 67 N. E. 433.

The *Thompson* and *Kittell* cases arose under a statute prior to Section 55(a) of the New York Insurance Code, effective March 31, 1927, hereinafter discussed, and the *Addiss* case arose afterwards. The *Addiss* case stated the question to be decided in that case as follows (ALR 1385):

"Did section 55-a of the Insurance Law (Consol. Laws c. 28), effective March 31, 1927, apply to pre-existing creditors as well as pre-existing policies?"

In discussing the Domestic Relations Law of New York, which provided that the wife was entitled to receive the insurance money payable under a policy, free from all claims of creditors or representatives of her husband except where the premium actually paid exceeded $500, the court said (p. 1386):

> "In matter of Thompson, 184 N. Y. 36, 40, 76 N. E. 870, 871, we said the following regarding this provision: 'Construing this statute, we have held that the wife's right to the insurance fund created by the husband's annual appropriation or investment of his moneys in premiums for insurance upon his life for the benefit of his wife does not rest upon contract, but upon legislative grant, exempting the fund from the claims of creditors; that the statute is an enabling act and relates to the remedy; that the state has the right to change the exemption before the fund reaches the wife, and therefore, the proceeds of policies issued before the enactment of the statute are subject to its provisions. Kittell v. Domeyer, 175 N. Y. 206 (67 N. E. 433)."

In the *Kittell* case, *supra,* the court said (p. 435):

> "With respect to the argument that the statute is not retroactive, and that it cannot validly be made to apply to the proceeds of policies issued before its enactment, the opinion below is equally satisfactory. It was held, in effect, that the legislative intent bore upon the exemption of a fund which had been created by the husband as a provision for the benefit of his wife in the event of her surviving him. Her right did not rest upon contract, but upon a legislative grant, by way of exemption from the claims of creditors, of an insurance fund created by the husband's annual appropriation or investment of his moneys. The wife's right was contingent upon her surviving her husband, in which event only she was 'entitled to receive the

> insurance money'. The statute is enabling, and relates to the remedy. Baron v. Brummer, 100 N. Y. 372, 3 N. E. 474. The right of the state is clear to change and to regulate the exemption before the insurance fund which the husband accumulates during his life reaches the wife."

Thus it is held that the right of the wife under insurance statutes does not rest upon contract but upon legislative grant, and that these statutes are enabling and relate to the remedy. The New York court further holds, as above quoted, that the right of the state is clear to change and regulate the exemption before the fund reaches the wife. Under the law of New York when these last cited cases were decided, there was no provision for the payment to the wife's executors or administrators of the proceeds of the policy, in event she predeceased her husband, as is afterwards found in Sec. 55(a) and in our Code. However, the principle established by these three cases is all the more applicable now, that the statute relates to the remedy and the Legislature had authority to make the statute apply to pre-existing policies.

4. Congress had full power to pass the Act of June 19, 1934, to protect the proceeds of these policies from the creditors and personal representative of the insured.

The power of Congress to legislate for the District of Columbia was fully discussed in *Neild* v. *District of Columbia*, 71 App. 306, 110 Fed. 2nd 246, where it is held that Congress possesses full and unlimited jurisdiction to provide for the welfare of the citizens of the District of Columbia by any and every act of legislation made conducive to that end, exercising complete legislative control as contrasted with the limited power of the state legislature.

The constitutional inhibition against impairing the obligation of contracts does not prevent the state legislature from exercising powers vested in it for the promotion of

the common weal or as may be necessary for the general good of the public, though contracts previously entered into may be thereby affected. *Manigault* v. *Springs*, 199 U. S. 473, 490, *Home Building and Loan Association* v. *Blaisdell*, 290 U. S. 398, 437.

The regulation of life insurance and the protection of the wife and children of the insured is a legitimate end and the statutes enacted by Congress to effect that end are reasonable. Therefore even if the same inhibition were imposed upon Congress as to the impairment of the obligation of existing contracts, Congress would nevertheless have the power to pass these acts.

We insist therefore that even if the construction contended for in the Court below was the proper construction (and it is not) Congress had full power to pass this act for the public welfare and for the regulation of the insurance business in the District of Columbia.

Likewise Congress had power to exempt from the claims of the creditors of the insured the proceeds of these after maturing policies, and effectually afforded this protection by specifically providing that the personal representative of the named beneficiary should be entitled to the proceeds of the policy against the claims of the personal representative of the insured.

5. The statute is clear and unambiguous.

The Act of 1934 expressly provides that the personal representative of a beneficiary of the policy of insurance shall be entitled to the proceeds of this policy as against the claims of creditors and the personal representatives of the insured notwithstanding any provision of the policy reserving the right to change the beneficiary and notwithstanding that the policy is made payable to the insured if the beneficiary shall predecease the insured. This language is clear and explicit and would seem to need no construction. The Act of 1901 in terms vested in the wife existing policies thereafter maturing in which she was

named beneficiary. The Act of 1934 vested in the wife the proceeds of policies theretofore written and thereafter maturing as well as those written after the enactment of the law and to effect that end deliberately provided that in case the wife predeceased the insured still being the named beneficiary in the policy at the death of the insured her personal representative should be entitled to these proceeds.

It was argued in the Court below that the effect of this statute was to exempt the proceeds of insurance policies from the claims of creditors of the insured but not to create a property right in the beneficiary. It is manifest that only by creating a vested right in the proceeds can they be exempt from the claims of creditors and indeed the plain terms of the statute are that the personal representative of the named beneficiary shall be entitled to the proceeds of these policies as against the creditors and personal representative of the insured. To give the statute the construction contended for by the appellee is to nullify its plain terms.

It was further argued in the Court below that any right vested by the statute in the wife was defeated by her death before the insured. Again this argument is in the teeth of the plain terms of the act, for there could be no personal representative of the beneficiary until her death and there could be no personal representative of the insured until his death, and the act expressly provides that her personal representative shall be entitled to the proceeds of the policy against the personal representative of the insured.

The construction we contend for does not prohibit the insured from assigning the policy or where he reserves the right from changing the beneficiary. Only these two affirmative acts by the insured can defeat the vested right of the wife to the proceeds during her life and the right of her personal representative to the proceeds at her death. It is obvious that if the beneficiary in the policy is changed by the affirmative act of the insured either before or after

the death of the first-named beneficiary, another beneficiary comes within the purview of the act and any right that the first beneficiary once had has been defeated.

No right to change the beneficiary was ever exercised by Mr. Buckley, either before or after the death of Mrs. Buckley, and at his death she was still the named beneficiary in the policy which entitled her personal representative to the proceeds.

CONCLUSION.

Appellant, as the personal representative of the wife of the insured, the named beneficiary in the policies of insurance at his death, is entitled to the proceeds of the insurance policies, and the judgment of the Court below should be reversed.

Respectfully submitted,

LESLIE C. GARNETT,
Attorney for the Appellant.

APPENDIX

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IN THE

United States Court of Appeals

DISTRICT OF COLUMBIA.

No. 9053.

KARL KINDLEBERGER, ADMINISTRATOR OF THE ESTATE OF JULIA C. BUCKLEY, *Appellant,*

v.

LINCOLN NATIONAL BANK OF WASHINGTON, ET AL., EXECUTORS OF THE ESTATE OF MICHAEL E. BUCKLEY, *Appellees.*

Appeal from the District Court of the United States for the District of Columbia.

JOINT APPENDIX.

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1 Filed Jan 24 1945

In the District Court of the United States for the District of Columbia

Civil Action No. 27452

KARL KINDELBERGER, Tower Building, Administrator of the Estate of Julia C. Buckley, *Plaintiff*

vs.

LINCOLN NATIONAL BANK OF WASHINGTON, 7th & D Sts., N. W., and WARREN CRAVEN, 4407 Leland St., Chevy Chase, Maryland, Executors of the Estate of Michael E. Buckley, *Defendants.*

Complaint to Recover Proceeds of Life Insurance Policies.

1. The plaintiff is a citizen of the United States and a resident of the District of Columbia, and was on the 12th day of June, 1944 appointed and duly qualified as administrator of the estate of Julia C. Buckley, deceased.

2. The Lincoln National Bank of Washington is a corporation, doing business in the District of Columbia, and the defendant, Warren Craven, is a citizen of the United States and a resident of the State of Maryland, but is practicing law in the District of Columbia, and they are executors, under the last will and testament, of the estate of Michael E. Buckley, deceased.

3. The said Michael E. Buckley died testate on the 8th day of December 1943 and his estate is being administered in this court under Administration No. 62913 by the said Lincoln National Bank of Washington and the defendant, Warren Craven, as executors aforesaid.

4. The said Julia C. Buckley predeceased the said Michael E. Buckley. She died October 3, 1935, intestate, leav-
2 ing four children, to wit: J. Norman Buckley, who died testate December 3, 1937, M. Edward Buckley, Jr., Mary B. McGinness and Louise Buckley.

5. During the lifetime of the said Julia C. Buckley, and on the 13th day of December 1924, the New York Life Insurance Co. of New York issued two life insurance policies on the life of the said Michael E. Buckley, being policy no. 8937646 for $10,000. and policy no. 8937647 for $5,000., in each of which policies plaintiff's intestate, Julia C. Buckley, was named as beneficiary, with the right reserved in each of said policies to change the beneficiary, with a provision in each that "in event of the death of the beneficiary before the insured, the interest of such beneficiary shall vest in the insured".

Policy no. 8937646 for $10,000. was assigned by the assured to the Perpetual Building Association as security for a loan, but at the death of said insured, said loan had long since been paid and the said Perpetual Building Association had no interest in said policy or lien thereon. Photostat copies of each of said policies is hereto attached as Exhibits "A" and "B".

6. The proceeds of each of said policies in the sums of $11,370.20 and $5,685.11 respectively, were paid over by the said New York Life Insurance Co. to the defendant executors with full knowledge of the plaintiff's claim, and are held to await the determination of whether the said sums formed a part of the assets of the estate of the said Michael E. Buckley, the insured, or part of the assets of the estate of Julia C. Buckley, the beneficiary.

7. The plaintiff avers that although the insured, Michael E. Buckley, reserved the right in said policies to change the beneficiary and each policy contained the provision above set out that "in event of the death of any beneficiary before the insured, the interest of such beneficiary shall vest in the insured", and regardless of the fact that policy no. 8937646 in the sum of $10,000. had theretofore been assigned to the Perpetual Building Association, the loan for which said policy was security had been fully paid off before the
3 death of the insured, nevertheless Julia C. Buckley had a vested interest in each of said policies and the

proceeds of both of said policies are assets of the estate of the beneficiary, Julia C. Buckley, under the following provisions of Title 35, Section 716 of the D. C. Code of 1940:

"When a policy of insurance, whether heretofore or hereafter issued, is effected by any person on his own life or on another life in favor of some person other than himself having an insurable interest therein, or, except in cases of transfer with intent to defraud creditors, if a policy of life insurance is assigned or in any way made payable to any such person, the lawful beneficiary or assignee thereof, other than the insured or the person so effecting such insurance, or his executors or administrators, shall be entitled to its proceeds and avail against the creditors and representatives of the insured and of the person effecting such insurance whether or not the right to change the beneficiary is reserved or permitted and whether or not the policy is made payable to the person whose life is insured, if the beneficiary or assignee shall predecease such person."

WHEREFORE, the plaintiff prays:

1. That an order be entered declaring the proceeds of said policies in the said sums of $11,370.20 and $5,685.11 respectively, are assets of the estate of the said Julia C. Buckley.

2. That the defendant, Lincoln National Bank of Washington and Warren Craven, as executors, be required to pay over to the plaintiff, as administrator of the estate of Julia C. Buckley, the said sums of $11,370.20 and $5,685.11.

LESLIE C. GARNETT
331 Tower Building
Attorney for Plaintiff.

* * * * * * * * * *

CHARTERED 18[illegible]

New York Life Insurance Company

A MUTUAL COMPANY

AGREES TO PAY

BENEFICIARY — to Julia C, wife of the insured

•• _____ •• Beneficiary
(with the right on the part of the Insured to change the Beneficiary in the manner provided in Section 7)

FACE AMOUNT — •• TEN THOUSAND •• Dollars
(THE FACE OF THIS POLICY)

upon receipt of due proof of the death of

INSURED — •• MICHAEL F. BUCKLEY •• the Insured; or

DOUBLE INDEMNITY — •• TWENTY THOUSAND •• Dollars
(DOUBLE THE FACE OF THIS POLICY)

upon receipt of due proof that the death of the Insured resulted directly and independently of all other causes from bodily injury effected solely through external, violent and accidental cause, and that such death occurred within ninety days after sustaining such injury, subject to all the terms and conditions contained in Section 2 hereof.

AND THE COMPANY AGREES TO PAY TO THE INSURED

DISABILITY BENEFITS — •• ONE HUNDRED •• Dollars each month
($10 PER $1,000 OF THE FACE OF THIS POLICY)

during the lifetime of the Insured and also to waive the payment of premiums, if the Insured becomes wholly and presumably permanently disabled before age 60, subject to all the terms and conditions contained in Section 1 hereof.

PREMIUM

This contract is made in consideration of the payment in advance of the sum of $ 141.80, the receipt of which is hereby acknowledged, constituting the first premium and maintaining this Policy for the period terminating on the thirteenth day of March Nineteen Hundred and twenty-five, and of a like sum on said date and every twelve calendar months thereafter during the life of the Insured. $554.70

The premium includes a ~~s~~ •• annual premium of $ 10.00 for the Double Indemnity Benefit and $ 59.90 for the Disability Benefits. Any premium due on or after the anniversary of the Policy on which the age of the Insured at nearest birthday is 60, shall be reduced by the amount of premium charged for the Disability Benefits.

This Policy takes effect as of the thirteenth day of December Nineteen Hundred and twenty-four, which day is the anniversary of the Policy.

O. L. D. & D. I. 933-101

AGE 50

Insurance Payable at Death. Premiums Payable during Life unless Dividends Applied to Shorten Premium Paying Period. Disability Benefits. Double Indemnity for Fatal Accident. Annual Participation in Surplus.

HOME OFFICE NEW YORK, N.Y.

Section 1 –DISABILITY BENEFITS

1. **Total Disability.**—Disability shall be deemed to be total whenever the Insured is wholly disabled by bodily injury or disease so that he is prevented thereby from engaging in any occupation whatsoever for remuneration or profit.

2. **Permanent Disability.** Disability shall be presumed to be permanent, (a) Whenever the Insured will presumably be so totally disabled for life; or (b) After the Insured has been so totally disabled for not less than three consecutive months immediately preceding receipt of proof thereof.

3. **Benefits.** Upon receipt at the Company's Home Office, before default in payment of premium, of due proof that the Insured is totally and presumably permanently disabled and that such disability occurred after the insurance under this Policy took effect and before its anniversary on which the Insured's age at nearest birthday is sixty years, the following benefits will be granted:

(a) **Income Payments.** The Company will pay to the Insured a monthly income of $10 per $1,000 of the face of the policy during his lifetime and continued disability, beginning immediately on receipt of said proof. Any income payment due before the Company approves the proof of disability shall be payable upon such approval. If disability results from insanity, income payments under this section will be paid to the beneficiary in lieu of the Insured.

(b) **Waiver of Premiums.** The Company will waive payment of any premium falling due after approval of said proof and during such disability. Any premium due prior to such approval is payable in accordance with the terms of the policy, but if due after receipt of proof will, if paid, be refunded upon approval of proof.

4. In the event of default in payment of premium after the Insured has become totally disabled, the policy will be restored upon payment of arrears of premium with interest at 5%, provided due proof that the Insured is totally and presumably permanently disabled, as herein defined, is received by the Company not later than six months after said default and the benefits under this section shall then be the same as if said default had not occurred.

5. It is further agreed that the total and irrecoverable loss of the sight of both eyes, or of the use of both hands or of both feet or of one hand and one foot shall be considered total and permanent disability.

6. **Recovery from Disability.** The Company may from time to time demand due proof of the continuance of total disability, but not oftener than once a year after it has continued for two full years. Upon failure to furnish such proof, or if at any time it shall appear to the Company that the Insured is able to engage in any occupation for remuneration or profit, no further income payments shall be made nor premiums waived.

7. The sum payable in any settlement of the policy shall not be reduced by income payments made nor by premiums waived under the above provisions. Dividends, loan and surrender values shall be the same as if the waived premiums had been duly paid. If any benefit under this section is unpaid at the time of the Insured's death it shall be payable to the person entitled to the proceeds of the policy.

8. These Disability Benefits will not apply if the disability of the Insured shall result from self-inflicted injury or from military or naval service in time of war.

Section 2—DOUBLE INDEMNITY

The provision for Double Indemnity Benefit on the first page hereof will not apply if the Insured's death resulted from self-destruction, whether sane or insane; from any violation of law by the Insured; from military or naval service in time of war; from engaging in riot or insurrection; from war or any act incident thereto; from engaging, as a passenger or otherwise, in submarine or aeronautic operations; or directly or indirectly from physical or mental infirmity, illness or disease of any kind. The Company shall have the right and opportunity to examine the body, and to make an autopsy unless prohibited by law.

Section 3—PARTICIPATION IN SURPLUS—DIVIDENDS

The proportion of divisible surplus accruing upon this Policy shall be ascertained annually. Beginning at the end of the second insurance year, and on each anniversary thereafter, such surplus as shall have been apportioned by the Company to this Policy shall at the option of the Insured be either

(a) Paid in cash; or

(b) Applied toward payment of premiums; or

(c) Applied to purchase a Participating Paid-up Addition to the sum insured (without Disability or Double Indemnity Benefits); or

(d) Left to accumulate at such rate of interest as the Company may declare on funds so held, but at a rate never less than three per cent compounded and credited annually, and withdrawable in cash by the Insured on any anniversary, or payable at the maturity of the Policy to the person entitled to its proceeds.

If no option is selected, the dividend will be applied to the purchase of a paid-up addition to the sum insured. The Insured may surrender such paid-up addition for cash at any time not later than three months after any default in the payment of premium, and the cash value thereof shall never be less than the original cash dividend.

Dividends May Be Applied to Shorten Term of Premium Payments, or Mature Policy as an Endowment.—Whenever the cash value of this Policy, including the cash value of any dividend additions under Option (c), plus any sums held under Option (d), equals or exceeds the net single premium calculated on the same basis as the premium on this Policy for a Policy giving the same rights, privileges and benefits, at the then attained age of the Insured, the Company, on any anniversary of the Policy thereafter, upon the Insured's written request, will indorse the Policy as a fully paid-up, participating Policy, and will pay in cash the excess, if any, of said cash value over said single premium, and thereafter no further payment of premiums will be required; or whenever said cash value shall equal or exceed the face amount of this Policy, the Company, upon due surrender of the Policy and all claims thereunder, will pay in cash the face amount of the Policy and any excess of said cash value, less any indebtedness to the Company.

Section 4—LOAN VALUES

After three full years' premiums have been paid and before default in the payment of premium, the Company will advance to the Insured on the sole security of this Policy as duly evidenced in writing any sum desired,—provided the total indebtedness to the Company, including any advance then made, shall never exceed that sum which with six per cent interest to the end of the then current insurance year shall equal the Cash Surrender Value. Interest on the loan shall be at the rate of six per cent per annum payable annually on the anniversary of the Policy. If interest is not paid when due, it shall be added to the principal. All or any part of the indebtedness may be repaid at any time before the Company has deducted it from the value of the Policy. Failure to repay such indebtedness or to pay interest shall not avoid the Policy, but whenever the amount of the total indebtedness equals the Cash Surrender Value, the Policy shall become void one month after the Company shall have mailed notice to the last known address of the Insured and of the assignee of record, if any.

TABLE OF MINIMUM LOAN VALUES FOR EACH $1,000 OF THE FACE AMOUNT

Years' Premiums Paid	Loan Value	Years' Premiums Paid	Loan Value
3	$55	15	$355
4	80	16	379
5	105	17	402
6	130	18	425
7	156	19	447
8	183	20	469
9	209	21	490
10	235	22	511
11	260	23	532
12	283	24	551
13	308	25	571
14	332		

Section 5—SURRENDER VALUES

After three full years' premiums have been paid, the Insured may within three months after any default in payment of premium or within thirty days after any anniversary if the Policy has become fully paid, surrender the Policy, and

(1) Receive its Cash Surrender Value; or

(2) Receive the amount of participating Paid-up Insurance which the cash surrender value at date of default less any indebtedness hereon will purchase, payable at the same time and on the same conditions as this Policy, but without disability or double indemnity benefits. The Insured may at any time obtain a loan on such paid-up insurance, or surrender it for its cash surrender value; or

(3) If the Policy be not surrendered for cash or for paid-up insurance within three months after default in payment of premium, its cash surrender value at date of default, less the amount of any indebtedness, shall automatically purchase Continued Insurance from the date of default for the face of the Policy plus any dividend additions and less any indebtedness to the Company. The Continued Insurance shall be without future participation and without the right to loans, cash surrender values, disability or double indemnity benefits.

The Cash Surrender Value shall be the reserve on the face of the Policy at the end of the insurance year or, in event of default, at the date of default (omitting fractions of a dollar per thousand of insurance) and the reserve on any outstanding paid-up additions, plus any dividends standing to the credit of the Policy, and less a surrender charge for the third to the ninth years, inclusive, of not more than one and one-half per cent of the face of the Policy. Such reserve will be computed on the basis of the American Table of Mortality and interest at three per cent, and the amount of paid-up insurance under (2) and the term of the continued insurance under (3) will be computed on the same basis at the attained age of the Insured on the date of default.

The values in the table opposite are computed in accordance with the above provisions, assuming that premiums have been duly paid for the number of years stated, that there is no indebtedness to the Company, no outstanding paid-up additions, and no dividends standing to the credit of the Policy; the surrender charge, if any, has been deducted.

TABLE OF GUARANTEED SURRENDER VALUES

After Policy has been in force	Cash Surrender Value for each $1,000 of the Face Amount	Paid-up Life Insurance for each $1,000 of the Face Amount	Face Amount of the Policy continued for	
			Years	Days
3	$59	$101	3	231
4	85	143	4	316
5	112	186	5	346
6	138	223	6	266
7	166	263	7	173
8	194	302	8	30
9	222	340	8	208
10	250	377	8	349
11	276	408	9	64
12	301	438	9	120
13	327	468	9	156
14	352	496	9	176
15	377	523	9	181
16	402	549	9	175
17	427	574	9	158
18	451	597	9	132
19	474	620	9	98
20	498	642	9	55
21	520	662	9	4
22	542	682	8	312
23	564	701	8	248
24	585	718	8	177
25 Years	606	736	8	97

Ed. June '16. O. L. 1,000. 50.

Values for later years will be computed on the same basis and will be furnished on request

Section 6—TERM INSURANCE IN CASE LOAN

Any loan under this Policy may be covered by term insurance as follows:

The Insured must furnish evidence of insurability satisfactory to the Company.

2. The premium shall be computed at the attained age of the Insured at the time the term insurance is made or renewed.

3. Term insurance shall not extend beyond the next anniversary, but may under the same conditions be renewed from year to year. No term insurance shall be made or renewed after age sixty-five.

4. If the term insurance exceeds the indebtedness, the Company may cancel the excess and refund the unearned premium.

5. Term insurance takes effect upon delivery to the Insured of the Company's Policy therefor. The sum payable as term insurance shall be applied to the cancelation of the indebtedness.

PREMIUMS FOR EACH $100 OF TERM INSURANCE

Insured's Attained Age	Premium for One Year	Insured's Attained Age	Premium for One Year	Insured's Attained Age	Premium for One Year	Insured's Attained Age	Premium for One Year
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

For periods of less than one year, the premium shall be at the rate of one-tenth of the one year's premium for each month and fraction of a month

Section 7—OTHER BENEFITS AND PROVISIONS

Age.—If the age of the Insured has been misstated, the amount payable hereunder shall be such as the premium paid would have purchased at the correct age.

Assignment.—Any assignment of this Policy must be made in duplicate and one copy filed with the Company at its Home Office. The Company assumes no responsibility for the validity of any assignment.

Change of Beneficiary.—The Insured may at any time, and from time to time, change the beneficiary, provided this Policy is not then assigned. Every change of beneficiary must be made by written notice to the Company at its Home Office accompanied by the Policy for indorsement of the change thereon by the Company, and unless so indorsed the change shall not take effect. After such indorsement the change shall relate back to and take effect as of the date the Insured signed said written notice of change whether the Insured be living at the time of such indorsement or not, but without prejudice to the Company on account of any payment made by it before such indorsement. In the event of the death of any beneficiary before the Insured the interest of such beneficiary shall vest in the Insured, unless otherwise provided herein.

Grace.—If any premium is not paid on or before the day it falls due the policy-holder is in default; but a grace of one month (not less than thirty days) will be allowed for the payment of every premium after the first, during which time the insurance continues in force. If death occurs within the period of grace the unpaid premium for the then current insurance year will be deducted from the amount payable hereunder.

Payment of Premiums.—All premiums are payable on or before their due date at the Home Office of the Company or to an authorized agent of the Company, but only in exchange for the Company's official premium receipt signed by the President, a Vice-President, a Second Vice-President, a Secretary or the Treasurer of the Company, and countersigned by the person receiving the premium. No person has any authority to collect a premium unless he then holds said official premium receipt. The premium is always considered as payable annually in advance, but by agreement in writing and not otherwise may be made payable in semi-annual or quarterly payments. Any unpaid premiums required to complete payment for the current insurance year in which death occurs shall be deducted from the amount payable hereunder. The payment of the premium shall not maintain the Policy in force beyond the date when the next payment becomes due, except as to the benefits provided for herein after default in premium payment.

Reinstatement.—At any time within five years after any default, upon written application by the Insured and upon presentation at the Home Office of evidence of insurability satisfactory to the Company, this Policy may be reinstated together with any indebtedness in accordance with the loan provisions of the Policy, upon payment of loan interest, and of arrears of premiums with five per cent interest thereon from their due date.

Privilege of Change to Other Plans of Insurance.—At any time before default in payment of premium, provided the Insured is then less than 55 years of age and has not become disabled under the provisions of Section 1, the Insured may, without medical re-examination, exchange this Policy for a Policy of the same amount, with disability and double indemnity benefits, upon any plan of insurance having a higher rate of premium issued by the Company at the time this Policy takes effect, and containing the same privileges, benefits and conditions as would have been included in the Policy if it had been issued originally on the new plan. Such exchange shall be effective upon surrender of this Policy and the payment of a sum equal to the difference between the premiums on the new Policy and the premiums on this Policy up to the date of exchange, with compound interest at the rate of six per cent per annum from the due date of each premium to the date when the exchange is made, provided that if the premium for disability benefits on the new Policy is less than the premium for disability benefits on this Policy, the difference in premiums shall be on the basis of the premiums for the two Policies exclusive of the premiums for disability benefits; allowance will be made for any larger cash dividends on the new plan. The new Policy shall take effect as of the date of this Policy, and the premium shall be based upon the same age as this Policy at the rate in force at the date of this Policy.

Optional Methods of Settlement.—If there is no assignment of this Policy, the Insured, or in case the Insured shall not have done so, the beneficiary after the Insured's death, may, by written notice to the Company at its Home Office, make the proceeds of this Policy payable under one of the "Optional Methods of Settlement", which are indorsed hereon and made a part of this Policy, but no such option or change of option shall take effect until indorsed on the Policy by the Company at its Home Office.

Indebtedness.—Any indebtedness to the Company against the Policy shall be deducted in any settlement thereof.

Self-Destruction.—In event of self-destruction during the first two insurance years, whether the Insured be sane or insane, the insurance under this Policy shall be a sum equal to the premiums thereon which have been paid to and received by the Company and no more.

Miscellaneous Provisions.—The Policy and the application therefor, copy of which is attached hereto, constitute the entire contract. All statements made by the Insured shall, in absence of fraud, be deemed representations and not warranties, and no such statement shall avoid the Policy or be used in defense to a claim under it, unless it be contained in the written application and a copy of the application is indorsed upon or attached to this Policy when issued. The Insured may, without the consent of the beneficiary, receive every benefit, exercise every right and enjoy every privilege conferred upon the Insured by this Policy. No agent is authorized to waive forfeitures, or to make, modify or discharge contracts, or to extend the time for paying a premium.

Incontestability.—This Policy shall be incontestable after two years from its date of issue except for non-payment of premium and except as to provisions and conditions relating to Disability and Double Indemnity Benefits.

This Policy is free of conditions as to residence, travel, occupation, or military or naval service, except as provided under Sections 1 and 2. All benefits under this Policy are payable at the Home Office of the Company in the City and State of New York.

In Witness Whereof the NEW YORK LIFE INSURANCE COMPANY has caused this contract to be signed this Seventeenth day of December Nineteen Hundred and twenty-four

Raymond McBallard
Secretary.

Darwin P. Kingsley
President.

Examined PR MMM

[illegible]
Registrar.

NEW YORK LIFE INSURANCE COMPANY has made a loan upon the security of the value of this policy, which is an indebtedness against it, the deposit of the policy being waived.

New York, MAY 3- 1938

[illegible]
Secretary.

OPTIONAL METHODS OF SETTLEMENT

Option 1—The proceeds may be left with the Company subject to withdrawal in whole or in part at any time on demand in sums of not less than one hundred dollars. The Company will credit interest annually on the proceeds so left with it at such rate as it may each year declare on such funds and guarantees that the rate of interest shall never be less than three per cent.

Option 2—In equal instalments for an agreed number of years.

Option 3—In equal instalments for twenty years, and for as many years thereafter as the payee shall survive. The amount of each instalment shall be determined by the attained age of the payee on the date when the instalment payments begin.

The first instalment under Options 2 or 3 shall be payable immediately on the date when the proceeds of the Policy become due and annually, semi-annually, quarterly or monthly thereafter as may be agreed. If the Insured shall so direct in writing, the instalments payable under Options 2 or 3 shall not be transferable, nor subject to commutation or incumbrance during the lifetime of the Beneficiary.

In the event of the death of a payee any unpaid sum left with the Company under Option 1 shall be paid in one sum; any unpaid instalments payable under Option 2, or any instalments for the fixed period of twenty years only under Option 3 which shall not then have been paid, shall be commuted at three per cent compound interest, and unless otherwise agreed in writing shall be paid in one sum to the executors or administrators of such payee.

The sums payable under the foregoing options are based upon an interest earning of three per cent, but if in any year the Company shall declare for that year upon funds held by it under such options interest at a rate greater than three per cent, the sum then payable under Option 2, or under Option 3 within the fixed period of twenty years, shall be increased accordingly.

After this Policy becomes a claim and upon surrender of the Policy, the Company will make and deliver to each payee a certificate evidencing his or her rights and benefits under the option selected.

Instalment options are not applicable to a Policy which is payable to a corporation or co-partnership, nor to policies under which the net sum payable to any payee is less than one thousand dollars.

The minimum payments to any payee will be $50 when paid annually, $25 when paid semi-annually, $15 when paid quarterly, or $10 when paid monthly, and the total of the fractional payments each year shall equal the annual payment each year as shown in the following tables, which are based upon a Policy the proceeds of which are $1,000. The figures contained in the table will apply pro rata to the proceeds of this Policy.

OPTION 2

Number of Annual Instalments	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25
Amount of each Annual Instalment...	$ 507.30	343.23	261.19	211.99	179.22	155.63	138.30	124.69	113.81	104.92	97.53	91.29	85.94	81.32	77.29	73.74	70.59	67.75	65.25	62.96	60.91	59.04	57.32	55.75

OPTION 3

Age of Payee when Policy becomes payable	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
Amount of each Annual Instalment.....	$42.48	$40.17	$39.38	$39.06	$38.93	$38.91	$38.96	$39.05	$39.19	$39.36	$39.52	$39.70	$39.88	$40.08	$40.28	$40.49	$40.71	$40.94	$41.18
Age of Payee when Policy becomes payable	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37
Amount of each Annual Instalment.....	$41.42	$41.68	$41.95	$42.24	$42.53	$42.84	$43.16	$43.49	$43.84	$44.20	$44.58	$44.96	$45.39	$45.82	$46.27	$46.73	$47.22	$47.73	$48.25
Age of Payee when Policy becomes payable	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56
Amount of each Annual Instalment.....	$48.79	$49.36	$49.94	$50.54	$51.17	$51.80	$52.45	$53.12	$53.80	$54.49	$55.19	$55.89	$56.60	$57.29	$57.96	$58.66	$59.32	$60.00	$60.66
Age of Payee when Policy becomes payable	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73 and over		
Amount of each Annual Instalment.....	$61.16	$61.72	$62.23	$62.71	$63.15	$63.54	$63.89	$64.20	$64.45	$64.67	$64.86	$64.98	$65.09	$65.16	$65.21	$65.23	$65.25		

25201

REGISTER OF CHANGE OF BENEFICIARY

NOTE—NO CHANGE OF BENEFICIARY SHALL TAKE EFFECT UNLESS INDORSED ON THIS POLICY BY THE COMPANY AT THE HOME OFFICE

DATE OF REQUEST	BENEFICIARY	INDORSED BY
July 15, 1937	The Perpetual Building Association, Washington, D.C.	

New York Life Insurance Company

MICHAEL E. RUCKLEY

No. 8 937 646

Amount $ 10,000.

Annual Premium $ 534.70

Z. B. LLOYD, Agent,
436 Woodward Bldg.,
Washington, D. C.,
Washington Br.

Notice: It is not necessary for the Insured or the Beneficiary to employ the agency of any person in collecting the insurance under this Policy, or in receiving any of its benefits. Time and expense will be saved by writing direct to the Home Office, 346 Broadway, New York City.

Insurance payable at death.
Premiums payable during life unless dividends applied to shorten premium paying period.
Disability Benefits.
Double Indemnity for fatal accident.
Annual Participation in Surplus.

823-191

7

CHARTERED 18[illegible]

New York Life Insurance Company

A MUTUAL COMPANY

AGREES TO PAY

BENEFICIARY — to Julia C. wife of the insured

(with the right on the part of the Insured to change the Beneficiary in the manner provided in Section 7) — Beneficiary

FACE AMOUNT — •• FIVE THOUSAND •• Dollars
(THE FACE OF THIS POLICY)

upon receipt of due proof of the death of

INSURED — •• MICHAEL E. BUCKLEY •• the Insured; or

DOUBLE INDEMNITY — •• TEN THOUSAND •• Dollars
(DOUBLE THE FACE OF THIS POLICY)

upon receipt of due proof that the death of the Insured resulted directly and independently of all other causes from bodily injury effected solely through external, violent and accidental cause, and that such death occurred within ninety days after sustaining such injury, subject to all the terms and conditions contained in Section 2 hereof.

AND THE COMPANY AGREES TO PAY TO THE INSURED

DISABILITY BENEFITS — •• FIFTY •• Dollars each month
($10 PER $1,000 OF THE FACE OF THIS POLICY)

during the lifetime of the Insured and also to waive the payment of premiums, if the Insured becomes wholly and presumably permanently disabled before age 60, subject to all the terms and conditions contained in Section 1 hereof.

PREMIUM — This contract is made in consideration of the payment in advance of the sum of $ 70.90, the receipt of which is hereby acknowledged, constituting the first premium and maintaining this Policy for the period terminating on the Thirteenth day of March Nineteen Hundred and twenty-five, and of a like sum ($367.35) on said date and every twelve calendar months thereafter during the life of the Insured.

The premium includes a •• annual premium of $ 6.00 for the Double Indemnity Benefit and $ 19.95 for the Disability Benefits. Any premium due on or after the anniversary of the Policy on which the age of the Insured at nearest birthday is 60, shall be reduced by the amount of premium charged for the Disability Benefits.

This Policy takes effect as of the Thirteenth day of December Nineteen Hundred and twenty-four, which day is the anniversary of the Policy.

O. L. D. & D. I. 923-101

AGE 50

Insurance Payable at Death. Premiums Payable during Life unless Dividends Applied to Shorten Premium Paying Period. Disability Benefits. Double Indemnity for Fatal Accident. Annual Participation in Surplus.

8

HOME OFFICE NEW YORK, N.Y.

10

Section 1—DISABILITY BENEFITS

1. **Total Disability.**—Disability shall be deemed to be total whenever the Insured is wholly disabled by bodily injury or disease so that he is prevented thereby from engaging in any occupation whatsoever for remuneration or profit.

2. **Permanent Disability.** Disability shall be presumed to be permanent, (*a*) Whenever the Insured will presumably be so totally disabled for life; or (*b*) After the Insured has been so totally disabled for not less than three consecutive months immediately preceding receipt of proof thereof.

3. **Benefits.** Upon receipt at the Company's Home Office, before default in payment of premium, of due proof that the Insured is totally and presumably permanently disabled and that such disability occurred after the insurance under this Policy took effect and before its anniversary on which the Insured's age at nearest birthday is sixty years, the following benefits will be granted:

(*a*) **Income Payments.**—The Company will pay to the Insured a monthly income of $10 per $1,000 of the face of the policy during his lifetime and continued disability, beginning immediately on receipt of said proof. Any income payment due before the Company approves the proof of disability shall be payable upon such approval. If disability results from insanity, income payments under this section will be paid to the beneficiary in lieu of the Insured.

(*b*) **Waiver of Premiums.**—The Company will waive payment of any premium falling due after approval of said proof and during such disability. Any premium due prior to such approval is payable in accordance with the terms of the policy, but if due after receipt of proof will, if paid, be refunded upon approval of proof.

4. In the event of default in payment of premium after the Insured has become totally disabled, the policy will be restored upon payment of arrears of premium with interest at 5%, provided due proof that the Insured is totally and presumably permanently disabled, as herein defined, is received by the Company not later than six months after said default and the benefits under this section shall then be the same as if said default had not occurred.

5. It is further agreed that the total and irrecoverable loss of the sight of both eyes, or of the use of both hands or of both feet or of one hand and one foot shall be considered total and permanent disability.

6. **Recovery from Disability.**—The Company may from time to time demand due proof of the continuance of total disability, but not oftener than once a year after it has continued for two full years. Upon failure to furnish such proof, or if at any time it shall appear to the Company that the Insured is able to engage in any occupation for remuneration or profit, no further income payments shall be made nor premiums waived.

7. The sum payable in any settlement of the policy shall not be reduced by income payments made nor by premiums waived under the above provisions. Dividends, loan and surrender values shall be the same as if the waived premiums had been duly paid. If any benefit under this section is unpaid at the time of the Insured's death it shall be payable to the person entitled to the proceeds of the policy.

8. These Disability Benefits will not apply if the disability of the Insured shall result from self-inflicted injury or from military or naval service in time of war.

Section 2—DOUBLE INDEMNITY

The provision for Double Indemnity Benefit on the first page hereof will not apply if the Insured's death resulted from self-destruction, whether sane or insane, from any violation of law by the Insured; from military or naval service in time of war; from engaging in riot or insurrection; from war or any act incident thereto; from engaging, as a passenger or otherwise, in submarine or aeronautic operations; or directly or indirectly from physical or mental infirmity, illness or disease of any kind. The Company shall have the right and opportunity to examine the body, and to make an autopsy unless prohibited by law.

Section 3—PARTICIPATION IN SURPLUS—DIVIDENDS

The proportion of divisible surplus accruing upon this Policy shall be ascertained annually. Beginning at the end of the second insurance year, and on each anniversary thereafter, such surplus as shall have been apportioned by the Company to this Policy shall at the option of the Insured be either

(*a*) Paid in cash; or

(*b*) Applied toward payment of premiums; or

(*c*) Applied to purchase a Participating Paid-up Addition to the sum insured (without Disability or Double Indemnity Benefits); or

(*d*) Left to accumulate at such rate of interest as the Company may declare on funds so held, but at a rate never less than three per cent compounded and credited annually, and withdrawable in cash by the Insured on any anniversary, or payable at the maturity of the Policy to the person entitled to its proceeds.

If no option is selected, the dividend will be applied to the purchase of a paid-up addition to the sum insured. The Insured may surrender such paid-up addition for cash at any time not later than three months after any default in the payment of premium, and the cash value thereof shall never be less than the original cash dividend.

Dividends May Be Applied to Shorten Term of Premium Payments, or Mature Policy as an Endowment.—Whenever the cash value of this Policy, including the cash value of any dividend additions under Option (*c*), plus any sums held under Option (*d*), equals or exceeds the net single premium calculated on the same basis as the premium on this Policy for a Policy giving the same rights, privileges and benefits, at the then attained age of the Insured, the Company, on any anniversary of the Policy thereafter, upon the Insured's written request, will indorse the Policy as a fully paid-up, participating Policy, and will pay in cash the excess, if any, of said cash value over said single premium, and thereafter no further payment of premiums will be required; or whenever said cash value shall equal or exceed the face amount of this Policy, the Company, upon due surrender of the Policy and all claims thereunder, will pay in cash the face amount of the Policy and any excess of said cash value, less any indebtedness to the Company.

Section 4—LOAN VALUES

After three full years' premiums have been paid and before default in the payment of premium, the Company will advance to the Insured on the sole security of this Policy *de* duly evidenced in writing any sum desired, provided the total indebtedness to the Company, including any advance then made, shall never exceed that sum which with six per cent interest to the end of the then current insurance year shall equal the Cash Surrender Value. Interest on the loan shall be at the rate of six per cent per annum payable annually on the anniversary of the Policy. If interest is not paid when due, it shall be added to the principal. All or any part of the indebtedness may be repaid at any time before the Company has deducted it from the value of the Policy. Failure to repay such indebtedness or to pay interest shall not avoid the Policy, but whenever the amount of the total indebtedness equals the Cash Surrender Value, the Policy shall become void one month after the Company shall have mailed notice to the last known address of the Insured and of the assignee of record, if any.

TABLE OF MINIMUM LOAN VALUES FOR EACH $1,000 OF THE FACE AMOUNT

Years' Premiums Paid	Loan Value	Years' Premiums Paid	Loan Value
3	$55	15	$355
4	80	16	379
5	105	17	402
6	130	18	425
7	156	19	447
8	183	20	469
9	209	21	490
10	235	22	511
11	260	23	532
12	283	24	551
13	308	25	571
14	332		

Section 5—SURRENDER VALUES

After three full years' premiums have been paid, the Insured may within three months after any default in payment of premium or within thirty days after any anniversary if the Policy has become fully paid, surrender the Policy, and

(1) Receive its Cash Surrender Value; or

(2) Receive the amount of participating Paid-up Insurance which the cash surrender value at date of default less any indebtedness hereon will purchase, payable at the same time and on the same conditions as this Policy, but without disability or double indemnity benefits. The Insured may at any time obtain a loan on such paid-up insurance, or surrender it for its cash surrender value; or

(3) If the Policy be not surrendered for cash or for paid-up insurance within three months after default in payment of premium, its cash surrender value at date of default, less the amount of any indebtedness, shall automatically purchase Continued Insurance from the date of default for the face of the Policy plus any dividend additions and less any indebtedness to the Company. The Continued Insurance shall be without future participation and without the right to loans, cash surrender values, disability or double indemnity benefits.

The Cash Surrender Value shall be the reserve on the face of the Policy at the end of the insurance year or, in event of default, at the date of default (omitting fractions of a dollar per thousand of insurance) and the reserve on any outstanding paid-up additions, plus any dividends standing to the credit of the Policy, and less a surrender charge for the third to the ninth years, inclusive, of not more than one and one-half per cent of the face of the Policy. Such reserve will be computed on the basis of the American Table of Mortality and interest at three per cent, and the amount of paid-up insurance under (2) and the term of the continued insurance under (3) will be computed on the same basis at the attained age of the Insured on the date of default.

The values in the table opposite are computed in accordance with the above provisions, assuming that premiums have been duly paid for the number of years stated, that there is no indebtedness to the Company, no outstanding paid-up additions, and no dividends standing to the credit of the Policy; the surrender charge, if any, has been deducted.

TABLE OF GUARANTEED SURRENDER VALUES

After Policy has been in force	Cash Surrender Value for each $1,000 of the Face Amount	Paid-up Life Insurance for each $1,000 of the Face Amount	Face Amount of the Policy continued for	
			Years	Days
3	$59	$101	3	231
4	85	143	4	316
5	112	186	5	346
6	138	223	6	266
7	166	263	7	173
8	194	302	8	30
9	222	340	8	208
10	250	377	8	349
11	276	408	9	64
12	301	438	9	120
13	327	468	9	156
14	352	496	9	176
15	377	523	9	181
16	402	549	9	175
17	427	574	9	158
18	451	597	9	132
19	474	620	9	98
20	498	642	9	55
21	520	662	9	4
22	542	682	8	312
23	564	701	8	248
24	585	718	8	177
25 Years	606	736	8	97

Ed. June '16. O. L. 1,000. 50.

Values for later years will be computed on the same basis and will be furnished on request

3

Section 6—TERM INSURANCE IN CASE OF LOAN

Any loan under this Policy may be covered by term insurance as follows:

1. The Insured must furnish evidence of insurability satisfactory to the Company.

2. The premium shall be computed at the attained age of the Insured at the time the term insurance is made or renewed.

3. Term insurance shall not extend beyond the next anniversary, but may under the same conditions be renewed from year to year. No term insurance shall be made or renewed after age sixty-five.

4. If the term insurance exceeds the indebtedness, the Company may cancel the excess and refund the unearned premium.

5. Term insurance takes effect upon delivery to the Insured of the Company's Policy therefor. The sum payable as term insurance shall be applied to the cancelation of the indebtedness.

PREMIUMS FOR EACH $100 OF TERM INSURANCE

Insured's Attained Age	Premium for One Year	Insured's Attained Age	Premium for One Year	Insured's Attained Age	Premium for One Year	Insured's Attained Age	Premium for One Year
[illegible]	[illegible]	[illegible]	[illegible]	41	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	66	2.00
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]		
27	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]		

For periods of less than one year, the premium shall be at the rate of one-tenth of the one year's premium for each month and fraction of a month.

Section 7—OTHER BENEFITS AND PROVISIONS

Age.—If the age of the Insured has been misstated, the amount payable hereunder shall be such as the premium paid would have purchased at the correct age.

Assignment.—Any assignment of this Policy must be made in duplicate and one copy filed with the Company at its Home Office. The Company assumes no responsibility for the validity of any assignment.

Change of Beneficiary.—The Insured may at any time, and from time to time, change the beneficiary, provided this Policy is not then assigned. Every change of beneficiary must be made by written notice to the Company at its Home Office accompanied by the Policy for indorsement of the change thereon by the Company, and unless so indorsed the change shall not take effect. After such indorsement the change shall relate back to and take effect as of the date the Insured signed said written notice of change whether the Insured be living at the time of such indorsement or not, but without prejudice to the Company on account of any payment made by it before such indorsement. In the event of the death of any beneficiary before the Insured the interest of such beneficiary shall vest in the Insured, unless otherwise provided herein.

Grace.—If any premium is not paid on or before the day it falls due the policy-holder is in default; but a grace of one month (not less than thirty days) will be allowed for the payment of every premium after the first, during which time the insurance continues in force. If death occurs within the period of grace the unpaid premium for the then current insurance year will be deducted from the amount payable hereunder.

Payment of Premiums.—All premiums are payable on or before their due date at the Home Office of the Company or to an authorized agent of the Company, but only in exchange for the Company's official premium receipt signed by the President, a Vice-President, a Second Vice-President, a Secretary or the Treasurer of the Company, and countersigned by the person receiving the premium. No person has any authority to collect a premium unless he then holds said official premium receipt. The premium is always considered as payable annually in advance, but by agreement in writing and not otherwise may be made payable in semi-annual or quarterly payments. Any unpaid premiums required to complete payment for the current insurance year in which death occurs shall be deducted from the amount payable hereunder. The payment of the premium shall not maintain the Policy in force beyond the date when the next payment becomes due, except as to the benefits provided for herein after default in premium payment.

Reinstatement.—At any time within five years after any default, upon written application by the Insured and upon presentation at the Home Office of evidence of insurability satisfactory to the Company, this Policy may be reinstated together with any indebtedness in accordance with the loan provisions of the Policy, upon payment of loan interest, and of arrears of premiums with five per cent interest thereon from their due date.

Privilege of Change to Other Plans of Insurance.—At any time before default in payment of premium, provided the Insured is then less than 55 years of age and has not become disabled under the provisions of Section 1, the Insured may, without medical re-examination, exchange this Policy for a Policy of the same amount, with disability and double indemnity benefits, upon any plan of insurance having a higher rate of premium issued by the Company at the time this Policy takes effect, and containing the same privileges, benefits and conditions as would have been included in the Policy if it had been issued originally on the new plan. Such exchange shall be effective upon surrender of this Policy and the payment of a sum equal to the difference between the premiums on the new Policy and the premiums on this Policy up to the date of exchange, with compound interest at the rate of six per cent per annum from the due date of each premium to the date when the exchange is made, provided that if the premium for disability benefits on the new Policy is less than the premium for disability benefits on this Policy, the difference in premiums shall be on the basis of the premiums for the two Policies exclusive of the premiums for disability benefits; allowance will be made for any larger cash dividends on the new plan. The new Policy shall take effect as of the date of this Policy, and the premium shall be based upon the same age as this Policy at the rate in force at the date of this Policy.

Optional Methods of Settlement.—If there is no assignment of this Policy, the Insured, or in case the Insured shall not have done so, the beneficiary after the Insured's death, may, by written notice to the Company at its Home Office, make the proceeds of this Policy payable under one of the "Optional Methods of Settlement", which are indorsed hereon and made a part of this Policy, but no such option or change of option shall take effect until indorsed on the Policy by the Company at its Home Office.

Indebtedness.—Any indebtedness to the Company against the Policy shall be deducted in any settlement thereof.

Self-Destruction.—In event of self-destruction during the first two insurance years, whether the Insured be sane or insane, the insurance under this Policy shall be a sum equal to the premiums thereon which have been paid to and received by the Company and no more.

Miscellaneous Provisions.—The Policy and the application therefor, copy of which is attached hereto, constitute the entire contract. All statements made by the Insured shall, in absence of fraud, be deemed representations and not warranties, and no such statement shall avoid the Policy or be used in defense to a claim under it, unless it be contained in the written application and a copy of the application is indorsed upon or attached to this Policy when issued. The Insured may, without the consent of the beneficiary, receive every benefit, exercise every right and enjoy every privilege conferred upon the Insured by this Policy. No agent is authorized to waive forfeitures, or to make, modify or discharge contracts, or to extend the time for paying a premium.

Incontestability.—This Policy shall be incontestable after two years from its date of issue except for non-payment of premium and except as to provisions and conditions relating to Disability and Double Indemnity Benefits.

This Policy is free of conditions as to residence, travel, occupation, or military or naval service, except as provided under Sections 1 and 2. All benefits under this Policy are payable at the Home Office of the Company in the City and State of New York.

In Witness Whereof the NEW YORK LIFE INSURANCE COMPANY has caused this contract to be signed this Seventeenth day of December Nineteen Hundred and twenty-four

Seymour M. Ballard
Secretary.

Darwin P. Kingsley
President.

EB

Examined ''OM

[illegible]
Registrar.

23101

OPTIONAL METHODS OF SETTLEMENT

Option 1—The proceeds may be left with the Company subject to withdrawal in whole or in part at any time on demand in sums of not less than one hundred dollars. The Company will credit interest annually on the proceeds so left with it at such rate as it may each year declare on such funds and guarantees that the rate of interest shall never be less than three per cent.

Option 2—In equal instalments for an agreed number of years.

Option 3—In equal instalments for twenty years, and for as many years thereafter as the payee shall survive. The amount of each instalment shall be determined by the attained age of the payee on the date when the instalment payments begin.

The first instalment under Options 2 or 3 shall be payable immediately on the date when the proceeds of the Policy become due and annually, semi-annually, quarterly or monthly thereafter as may be agreed. If the Insured shall so direct in writing, the instalments payable under Options 2 or 3 shall not be transferable, nor subject to commutation or incumbrance during the lifetime of the Beneficiary.

In the event of the death of a payee any unpaid sum left with the Company under Option 1 shall be paid in one sum; any unpaid instalments payable under Option 2, or any instalments for the fixed period of twenty years only under Option 3 which shall not then have been paid, shall be commuted at three per cent compound interest, and unless otherwise agreed in writing shall be paid in one sum to the executors or administrators of such payee.

The sums payable under the foregoing options are based upon an interest earning of three per cent, but if in any year the Company shall declare for that year upon funds held by it under such options interest at a rate greater than three per cent, the sum then payable under Option 2, or under Option 3 within the fixed period of twenty years, shall be increased accordingly.

After this Policy becomes a claim and upon surrender of the Policy, the Company will make and deliver to each payee a certificate evidencing his or her rights and benefits under the option selected.

Instalment options are not applicable to a Policy which is payable to a corporation or co-partnership, nor to policies under which the net sum payable to any payee is less than one thousand dollars.

The minimum payments to any payee will be $50 when paid annually, $25 when paid semi-annually, $15 when paid quarterly, or $10 when paid monthly, and the total of the fractional payments each year shall equal the annual payment each year as shown in the following tables, which are based upon a Policy the proceeds of which are $1,000. The figures contained in the table will apply pro rata to the proceeds of this Policy.

OPTION 2

Number of Annual Instalments	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25
Amount of each Annual Instalment	$	$	$	$	$	$	$	$	$	$	$	$	$	$	$	$	$	$	$	$	$	$	$	$
	507.39	343.23	261.19	211.00	179.22	156.03	136.30	124.09	113.81	104.92	97.53	91.29	86.04	81.32	77.29	73.74	70.59	67.78	65.25	62.96	60.91	59.04	57.32	55.75

OPTION 3

Age of Payee when Policy becomes payable	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
Amount of each Annual Instalment	$42.66	$40.17	$39.36	$38.66	$38.02	$38.91	$38.96	$39.06	$39.19	$39.35	$39.52	$39.70	$39.88	$40.08	$40.25	$40.49	$40.71	$40.94	$41.18
Age of Payee when Policy becomes payable	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37
Amount of each Annual Instalment	$41.42	$41.68	$41.96	$42.24	$42.53	$42.84	$43.16	$43.49	$43.84	$44.20	$44.56	$44.95	$45.36	$45.82	$46.27	$46.73	$47.22	$47.73	$48.28
Age of Payee when Policy becomes payable	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56
Amount of each Annual Instalment	$48.79	$49.36	$49.94	$50.54	$51.17	$51.80	$52.45	$53.12	$53.80	$54.49	$55.19	$55.89	$56.60	$57.29	$57.98	$58.68	$59.32	$59.95	$60.50
Age of Payee when Policy becomes payable	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73 and over		
Amount of each Annual Instalment	$61.16	$61.72	$62.23	$62.71	$63.18	$63.64	$63.89	$64.20	$64.45	$64.67	$64.86	$64.96	$65.09	$65.16	$65.21	$65.23	$65.25		

22008

REGISTER OF CHANGE OF BENEFICIARY

NOTE—No CHANGE OF BENEFICIARY SHALL TAKE EFFECT UNLESS RECORDED ON THIS POLICY BY THE COMPANY AT THE HOME OFFICE

DATE OF REQUEST	BENEFICIARY	INDORSED BY

New York Life Insurance Company

MICHAEL E. BUCKLEY

No. 8 957 647

Amount $ 5000.

** Annual Premium $ 267.35

Z. B. LLOYD, Agent,
436 Woodward Bldg.,
Washington, D. C.
Washington Br.

Notice: It is not necessary for the Insured or the Beneficiary to employ the agency of any person in collecting the insurance under this Policy, or in receiving any of its benefits. Time and expense will be saved by writing direct to the Home Office, 346 Broadway, New York City.

Insurance payable at death.
Premiums payable during life unless dividends applied to shorten premium paying period.
Disability Benefits.
Double Indemnity for fatal accident.
Annual Participation in Surplus.

923-191 A

12 Filed Feb 26 1945

Motion of the Lincoln National Bank of Washington and Warren Craven, Executors of the Estate of Michael E. Buckley, to Dismiss Complaint.

The defendants, The Lincoln National Bank of Washington and Warren Craven, Executors of the Estate of Michael E. Buckley, move the Court as follows:

1. To dismiss the action because the complaint fails to state a claim against these defendants upon which relief can be granted.

ARTHUR C. KEEFER,
900 F Street, N. W.,
Washington, D. C.
Attorney for Defendants.

* * * * * * * * * *

13 Filed May 15 1945

Order Dismissing Action.

This cause coming on to be heard upon the motion of The Lincoln National Bank of Washington and Warren Craven, executors of the estate of Michael E. Buckley, to dismiss the action because the complaint fails to state a claim against the defendant upon which relief can be granted, upon consideration thereof and of argument of counsel, it is by the Court this 15th day of May, 1945,

ORDERED, that the motion of The Lincoln National Bank of Washington and Warren Craven, executors of the estate of Michael E. Buckley, to dismiss the action be and the same is hereby granted; and

IT IS FURTHER ORDERED, that the complaint be and the same is hereby dismissed.

By the Court:
MATTHEW F. McGUIRE
Justice

No objection as to form:
LESLIE C. GARNETT
by D.
Attorney for Plaintiff.

BRIEF FOR APPELLEES

IN THE

United States Court of Appeals

DISTRICT OF COLUMBIA.

United States Court of Appeals
for the District of Columbia

FILED SEP 19 1945

Joseph W. Stewart
CLERK

No. 9053

KARL KINDLEBERGER, ADMINISTRATOR OF THE ESTATE OF JULIA C. BUCKLEY, *Appellant,*

v.

LINCOLN NATIONAL BANK OF WASHINGTON, ET AL., EXECUTORS OF THE ESTATE OF MICHAEL E. BUCKLEY, *Appellees.*

Appeal from the District Court of the United States for the District of Columbia.

ARTHUR C. KEEFER,
900 F Street N.W.,
Washington 4, D. C.
Attorney for the Appellees.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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IN THE

United States Court of Appeals

DISTRICT OF COLUMBIA.

No. 9053.

KARL KINDLEBERGER, ADMINISTRATOR OF THE ESTATE OF JULIA C. BUCKLEY, *Appellant,*

v.

LINCOLN NATIONAL BANK OF WASHINGTON, ET AL., EXECUTORS OF THE ESTATE OF MICHAEL E. BUCKLEY, *Appellees.*

Appeal from the District Court of the United States for the District of Columbia.

SUMMARY OF ARGUMENT.

1. The Act of Mar. 3, 1901, (Title 30, Secs. 213 and 214, D. C. Code (1940)) was one of a series of enactments for the furtherance of the policies of protecting married women and enabled a husband to provide a fund for the benefit of his wife in which his creditors have no interest or concern, and did not confer upon the insured's wife, as a result of her having been named as a beneficiary, a vested and indefeasible interest in the policies or proceeds there-

from where the insured reserved the absolute and irrevocable right to change the beneficiary.

2. Under the Act of Mar. 3, 1901, a beneficiary under life insurance policies acquired no vested right therein until the death of the insured where insured reserved the irrevocable right to change the beneficiary.

3. Prior to the Act of June 19, 1934, (Title 35, Sec. 716, D. C. Code (1940)) the cash surrender value of insurance policies wherein the insured reserved the right to change beneficiaries could be reached by creditors of the insured.

4. The intent of Congress in enacting the Act of June 19, 1934, was to exempt from bankruptcy proceedings the cash surrender value of life insurance policies made payable to the wife of an insured in which the insured reserved the absolute and irrevocable right to change the beneficiary.

5. The Act of June 19, 1934, did not confer upon an insured's wife, as a result of her having been named as a beneficiary, a vested and indefeasible interest in the policies or proceeds therefrom where the insured reserved the absolute and irrevocable right to change the beneficiary.

6. The Acts of Mar. 3, 1901, and June 19, 1934, neither preclude nor prohibit the issuance of life insurance policies containing provisions permitting the change of beneficiaries, or providing that in the event that the beneficiary should predecease the insured that the interest of the beneficiary shall vest in the insured.

7. The policies in question where issued prior to the effective date of the Act of June 19, 1934, and contained a provision that in the event of the death of a beneficiary that the interest of such beneficiary should vest in the insured. This provision was a part of the contract between the insured and insurer, and it was not the intent of Congress to impair this provision by passing the Act of June 19, 1934. While Congress included in the Act of June 19, 1934, policies "heretofore or hereafter issued," it was for the sole purpose of enabling an insured to name in existing policies a beneficiary who would be entitled to the exemptions con-

ferred by the Act when no preexisting rights were affected.

8. The policies in question were payable to the wife of the insured only in the event that she survived him, and having predeceased him her interest in the policies vested in the insured, as a result of the plain, clear and unequivocable provisions of the policies, and upon the death of the insured the proceeds became payable to his legal representatives.

ARGUMENT.

1. The act of March 3, 1901, and its effect, if any, on the insurance policies or the proceeds received therefrom.

The Act of Mar. 3, 1901, Ch. 854, pp. 1162 (31 Stat. 1375), D. C. Code (1940), Title 30, Secs. 213 and 214, set forth on page 4 of the Appellant's brief, was one of a series of enactments for the furtherance of the policies of protecting married women. It enabled a husband to provide a fund for the benefit of his wife in which his creditors have no interest or concern. The Statute authorized the issuing of policies of life insurance for the benefit of the wife, children, dependent relatives, or creditor, and it provides that policies of life insurance taken out for the benefit of, or bona fide assigned to any of the persons named, shall be vested in them free and clear from all claims of the creditors of such insured persons. The pertinent sections of this Statute are substantially the same as Secs. 9 and 10, Article 45 of the Annotated Code of Maryland (Flack) 1939, which read as follows:

> "9. All policies of life insurance upon the life of any person which may hereafter mature, and which have been or shall be taken out for the benefit of or bona fide assigned to the wife or children or any relative dependent upon such person or any creditor shall be vested in such wife or children or other relative or creditor, free and clear from all claims of the creditors of such insured person.
>
> "10. If the wife shall die before her husband the amount of such insurance may be payable after her

death to the children or descendants for their use, and to their guardian, if under age, and, if there be no children or descendants of the wife living at the time of her death, to her legal representatives."

The Court of Appeals of Maryland had occasion to comment on these provisions of the Maryland law in the case of *Pratt* v. *Hill*, 124 Md. 252, 92 A. 543, where it appeared that a controversy arose as to the disposition of the proceeds of a life insurance policy under the following circumstances: The wife obtained an insurance policy on her husband's life, premiums thereon were paid by her, and she was named as beneficiary. She died leaving her husband and four children surviving her who continued to pay the premiums on the insurance policy, and, upon the death of the husband, the proceeds of the insurance were paid to the administrator of the husband. Claim therefor was made by the children of the wife and husband, who claimed to have a vested interest therein. The Court in its opinion said, at pp. 254 and 255:

"* * * there is nothing to show whether the policy contained any provisions as to who should have the proceeds of the policy in case of death of the beneficiary, and if so, what they were, or whether there were any by-laws or other provisions controlling them. The allegation as to the sum being vested in the children of Sadie Squirrel is, so far as shown by the answer, simply the conclusion or construction of the appellant.

"Section 8 of Article 45 of the Code fully protects the amount of insurance due a wife on a policy on her husband's life for her sole use from the claims of the representatives of her husband or any of his creditors, and section 9 protects policies of insurance taken out for the benefit or *bona fide* assigned to the wife or children or any relative dependent upon such person or any creditor, from claims of the creditors of the insured person, and section 10 provides that: 'If the wife shall die before her husband the amount of such insurance may be payable after her death to the children or

> decedants for their use, and to their guardian, if under age, and if there be no children or decedants of the wife living at the time of her death, to her legal representative.' *But notwithstanding that provision of the Code, the policy or by-laws may make other provisions, and in that case, of course, section 10 would not apply.* (Italics supplied) It would therefore be impossible for us to determine who is or are entitled to this fund from anything in the record, and we could not attempt to do so, even if the appeal is properly before us."

We submit that there can be no valid objection to provisions in an insurance policy providing for the deposition of the proceeds thereof, and that the applicable statute, i. e., Secs. 213 and 214, Title 30, D. C. Code (1940) applies only when the policy contains no provisions to the contrary.

2. Prior to the passage of the Act of June 19, 1934, beneficiary under life insurance policies acquired no vested right therein until the death of the insured where insured reserved the right to change beneficiary.

Secs. 213 and 214, Title 30 of the District of Columbia Code (1940) do not create a vested right in the wife to proceeds of life insurance policies where the husband reserves the right to change the beneficiary at any time, although the policies are made payable to her if she survives the husband.

This statement, we submit, is supported by the case of *Rosman* v. *Travelers' Insurance Company,* 127 Md. 689, 96 A. 875, decided many years after the enactment of the pertinent Maryland law, Article 45, Secs. 9 and 10, supra. In this case the Court said, at pp. 692 and 693:

> "By the terms of the policy the insured reserved to himself the right to change the beneficiary without the consent of the beneficiary. By the overwhelming weight of authority it is held that where the rights of the beneficiary are dependent upon the will of the assured, the beneficiary acquires no vested right until the death of the insured. And this is assuredly founded upon

> reason; for by the contract between the insured and the insurer, any right of the beneficiary before death is a mere expectancy depending upon the will and acts of the insured. * * *
>
> "In 25 Cyc. 889, under Rights of Beneficiary, it is said: 'The beneficiary designated in an ordinary life insurance policy has a vested interest from the time the contract of insurance is made, in the absence of any stipulation for change of beneficiary by the insured.' "

The law of the Federal Courts is well expressed in the case of *Morgan* v. *Penn Mutual Life Insurance Co.*, 94 F. 2d 129, wherein the Court said, at page 130:

> "* * * Where no right is reserved in the policy to change the beneficiary without his consent, the policy confers immediately upon its issue a vested right in the beneficiary that cannot be defeated by assignment or transfer without his consent, but it is equally well settled by controlling authority in the national courts that, where the policy by its terms gives the insured the right to change the beneficiary or assign the policy, the beneficiary takes only a contingent interest therein in the nature of an expectancy."

This principle is followed and ably discussed in the cases of:

> *Andrews* v. *Andrews*, 97 F. 2d 487
> *Self, et al.* v. *New York Life Ins. Co.*, 56 F. 2d 364
> *Nance, et al.* v. *Hilliard*, 101 F. 2d 957.

3. Cash surrender value of insurance policies wherein insured reserved right to change beneficiary could be reached by creditors of insured prior to the passage of the Act of June 19, 1934.

In *Cohen* v. *Samuels*, 245 U. S. 50, 62 L. Ed. 124, it was held that a policy of insurance held by a bankrupt which had a cash surrender value became an asset in the trustee even though the policy was payable to a named beneficiary, if the bankrupt reserved the absolute power to change the beneficiary.

The effect of a statutory provision on insurance policies containing provisions that the insured may change beneficiaries was decided by the Supreme Court of the United States in the case of *Cohn* v. *Malone*, 248 U. S. 450, 63 L. Ed. 352. In this case it appears that the bankrupt took out two policies on his life in the Penn Mutual Life Insurance Company, loss under one payable to his "executors, administrators or assigns," under the other to his sister and brother, with full power in the assured "while this policy is in force and not previously assigned, to change the present beneficiary or beneficiaries." By formal written instruments dated July 15, 1910, he assigned both policies to his wife "if she outlives me, otherwise to my estate, with full power to the insured to change the beneficiary or surrender this policy to said company at any time, this to be done by instrument in writing under his hand and seal to be recorded at the home office of the company." Trustee demanded the policies which were in bankrupt's possession in order that the cash surrender value might be secured and distributed to creditors. The bankrupt defended upon two grounds: first, that the cash surrender value was not property which could have been transferred by him prior to bankruptcy; and second, that the assignment to his wife could not be defeated because of a provision of the Georgia Code, which provided as follows:

> "The assured may direct the money to be paid to his personal representative, or to his widow, or to his children, or to his assignee; and upon such direction given, and assented to by the insurer, no other person can defeat the same. But the assignment is good without such assent."

Mr. Justice McReynolds, in delivering the opinion of the Court, said, at p. 452:

> "The Circuit Court of Appeals held both grounds of defense bad. 236 Fed. Rep. 882. As to the first, its ruling accords with the doctrine recently announced in

Cohen v. *Samuels*, 245 U. S. 50. In respect of the second that court declared:

"'Nothing in the terms of the statute, especially when they are considered in the light of the circumstances of its enactment, indicates that it had any other purpose or effect than to deny to anyone other than the assured himself the power to defeat a direction by him to pay to his personal representative, or to his widow, or to his children, or to his assignee, the money payable in a life policy issued to him. The provision does not purport to make every such direction by the assured irrevocable by him, or to invalidate a stipulation in a life policy giving the assured the right to change beneficiary at any time during the continuance of the policy. The statute puts a direction by the assured to pay to his widow on the same footing as one to pay to his assignee. If a policy is assigned as security for a debt which the assured pays during his life, certainly the statute is not to be given the effect of putting it out of the power of the assured to change the beneficiary upon the reassignment of the policy to him by the satisfied creditor. Nothing in its terms justifies giving it a different operation or effect in the case of a direction to pay to the widow. *We are not of opinion that the provision quoted had the effect of conferring on the bankrupt's wife, as the result of her having been named as the beneficiary, a vested and indefeasible interest in policies by the terms of which the beneficiaries could be changed by the bankrupt at any time.' And we approve its conclusion.*" (Italics supplied)

Thus we contend that under the law and decisions above cited that prior to the Act of June 19, 1934, Ch. 672, PP. 16, Ch. V. (48 Stat. 1175), D. C. Code (1940), Title 35, Sec. 716, a wife obtained no vested interest in an insurance policy where the insured reserved the absolute power to change the beneficiary, and that the cash surrender value of such a policy could be reached by the trustee of the insured in case of bankruptcy.

4. The Act of June 19, 1934, and its effect, if any, on the insurance policies or the proceeds received therefrom.

Appellant also seeks relief under the provisions of the Act of June 19, 1934, supra, D. C. Code (1940), Title 35, Sec. 716, as set forth on page 4 of Appellant's brief.

An analysis of the Act and the intent of Congress in enacting the same and the decisions construing similar statutes, we submit, will readily dispose of any hope the appellant has to any relief thereunder.

The intent of Congress in enacting a general insurance statute for the District of Columbia, and particularly Sec. 16, Ch. V, (48 Stat. 1175), Sec. 716, Title 35, D. C. Code (1940) is pithily stated in the report made by the Senate Committee when recommending its passage to the Senate, as follows:

> "* * * The provisions as contained herein have been taken mostly from the New York Code, changed to meet local conditions. Many of the sections have been interpreted by the State and Federal Courts, for example, section 16, chapter 5 provides for the rights of creditors and beneficiaries under policies of life insurance. The Courts have interpreted the section we have selected to exempt from bankruptcy proceedings the cash-surrender value of a policy. The Code as now proposed we feel is adequate to meet the conditions that now exist."
>
> Senate Reports Vol. 2 (Report 1420), 73rd Cong. 2nd Session) 1934.

The provisions of the Act of June 19, 1934, supra, were taken from the New York Code (see Laws of New York, Ch. 488, Sec. 1, Laws of 1927, Insurance Code New York, Sec. 55-a) and are identical with the New York statute except in one particular; namely, in the New York statute the word "avails" appears, while in the Act of Congress the word "avail" is used. We think it is fair to assume that the letter "s" was omitted through an oversight.

The New York statute was construed by the Court of Appeals of that State in 1929, in the case of *Chatham Phoenix National Bank* v. *Crosney*, 251 N. Y. 189, 167 N. E. 217. Mr. Justice Lehman speaking for the Court in that case, said:

> "The debates in the senate in regard to the new section leave no doubt that, at least in that branch of the Legislature, it was understood that the purpose and effect of the new section was to include in its scope policies in favor of a wife upon the life of her husband, and to destroy any right which the creditors would otherwise have to the portion of the insurance money purchased by excess of annual premiums above $500.00 paid out of the husband's estate.
>
> "The language of the statute is derived from similar statutes in Massachusetts and Pennsylvania. In those jurisdictions the statutes apply to all policies, including policies in favor of a wife upon the life of her husband. In employing the same language the Legislature of New York may hardly be presumed to have intended that, in this jurisdiction, the language should have a more restricted meaning. * * * None the less, the intention is evident to remedy the condition which has precluded a husband from effecting insurance upon his life as a provision for the benefit of his wife even to the extent to which he might make such provision for the benefit of others having lesser claims. Certainly when the Legislature decided that the lawful beneficiary or assignee of a policy, effected by another on his own life, is entitled to the proceeds of the policy against the creditors of the insured, whether or not the right to change the beneficiary is reserved or permitted, we may not reasonably hold that the Legislature intended that an exception must be made in favor of the creditor of the insured against the wife."

Section 55(a) of the New York State Insurance Law has been construed many times by the Federal Courts in so far as it relates to the rights of creditors of an insured. The language of Mr. Justice Hand in the case of *In re: Messin-*

ger, 29 F. 2d 158, 68 ALR 1205, is particularly pertinent to the case at bar. Speaking for the United States Circuit Court of Appeals in that case he said at p. 161:

> "Sec. 55(a) of the State Insurance Law took effect March 31, 1927. It is unlikely that there were not creditors existing at that time, seeing that bankruptcy followed so soon after. To the creditors whose claims arose prior to the passage of the law, it would not apply. *Not only is a retroactive statute which disturbs existing rights unlikely to have been intended,* (italics supplied) but a state law which deprives existing creditors of their right to resort to property for payment of their claims would impair the obligations of contracts and contravenes Sec. 10, Article 1 of the Federal Constitution."

The theory under which plaintiff seeks to recover the proceeds of the insurance policies in the case at bar was presented to and rejected by the Supreme Court of the State of New York in 1931 in the case of *In re: Czarniak's Estate,* 251 N. Y. S. 536. In that case two policies of insurance were issued to decedent by the Prudential Insurance Company of America for the sum of $2,000 each on November 17, 1921, payable to "the executors, administrators or assigns of the insured." Each policy contained the following provision:

> "If there be no beneficiary living at the death of the insured the amount of insurance shall be payable to the executors, administrators or assigns of the insured unless otherwise provided in the policy."

The right to change the beneficiary had been reserved by the insured. On December 19, 1921, the beneficiary in each policy was changed, designating Stanislawa Ciesielska, a daughter of the insured, as beneficiary. Subsequently, the beneficiary married John W. Siembeder, who survived her and was named executor under her will. The beneficiary died December 24, 1930, and insured died February 4, 1931.

The executor of the last will and testament of the insured and the executor of the last will and testament of beneficiary both claimed the proceeds of the policies, the executor of the beneficiary making his claim by virtue of Sec. 55(a) of the Insurance Law. The Court held that the executor of the insured was entitled to the policies and proceeds therefrom, and in its opinion stated:

> "Executor of the estate of the beneficiary makes claim to same by virtue of Section 55(a) of the Insurance Law. This chapter was added by chapter 468 of the Laws of 1927 and is not retroactive.
>
> "If no change of beneficiary had been made, the proceeds would have been payable to the executors, administrators or assigns of the insured. If the beneficiary, Stanislawa Ciesielska, had been living at the time of the death of the insured the moneys would have been payable to her, the only effect of the change of beneficiary being to make the money payable to her, rather than the executors, administrators or assigns, of the insured. It did not change any other parts of the contracts of insurance. Consequently, there being no beneficiary living at the time of the death of the insured, the amount of insurance in each policy became payable to the executors, administrators, or assigns of the insured under the terms of the policy.
>
> "After the death of the beneficiary, the insured made his will in which he bequeathed the proceeds of these policies. He had the legal right to do so after the death of the beneficiary. Therefore the proceeds of these two policies pass under the will of the insured, rather than under the will of the beneficiary."

We submit Congress intended to and did create exemptions in enacting Sec. 716, Title 35, D. C. Code (1940). On the other hand, we submit that the Act and the adjudicated cases herein cited lead to the inescapable conclusion that the Act is one creating exemptions and not one fixing property rights.

5. Plaintiff's intestate acquired no vested interest in the policies of insurance because her right or interest therein was subject to be changed or defeated under the terms of the contract by which it was created.

In the present case not only did the insured reserve the right to change the beneficiary but provided in each policy "in the event of the death of any beneficiary before the insured the interest of such beneficiary shall vest in the insured."

In the case of *In re: Whiting*, 3 F. 2d 440, counsel for the bankrupt contended that the wife of the bankrupt had a vested interest in certain insurance policies. It appeared that the policies gave the insured the right to change the beneficiary at will. The Court in holding the terms of the policies precluded the beneficiary from obtaining a vested interest said:

> "To hold that the beneficiary of such policy had a vested interest would be tantamount to destroying the 'changed beneficiary' provisions of the policy itself."

In the case of *In re: Burza's Estate*, 279 N. Y. S. 90 (1935) the Court held in a case where the wife did not survive the husband her estate was not entitled to participate in the proceeds of an insurance policy on the theory that the interest of the wife, who was named as beneficiary, did not vest until the death of the insured.

In the case of *Morgan* v. *Sackett*, 16 N. Y. S. 2d, 583, it appeared that the New York Life Insurance Company issued a policy of life insurance upon the life of Kathleen M. Sackett in 1929, wherein Nettie M. Irwin was named beneficiary. Subsequently insured married Herbert Sackett, and insured substituted as beneficiary Susan B. Sackett to the extent of three-fifths and Herbert to the extent of two-fifths. The policy contained the exact provision as that set forth in the policies in the case at bar, namely:

> "In the event of death of any beneficiary before the insured, the interest of such beneficiary shall vest in the insured, unless otherwise provided herein."

The insured and beneficiaries were killed in a common disaster. Claims for the proceeds were made by the estates of the insured and beneficiaries. The Court held that under the wording of the policy of insurance, if the beneficiaries did not survive the insured no death benefits vested in them.

To the same effect is the case of *McGowin, etc.* v. *Menken, etc.*, 223 N. Y. 509, 5 ALR 794, 119 N. E. 877.

In the case of *In res: Valverde's Estate,* 265 N. Y. S. 485 (1933), affirmed 266 N. Y. 620, 195 N. E. 229, the policy was payable to the wife and contained the following provision: "The interest of any beneficiary who dies before the insured shall vest in the insured unless otherwise provided in the policy." The Court held that "the right of the beneficiary was conditionally vested, or to use the alternative phrase, vested subject to being divested, and would continue until the happening of the divesting condition, namely, her death 'before the insured' was demonstrated."

The case of *Preston* v. *Conn. Mutual Insurance Co.,* 95 Md. 101, 51 A. 838 is submitted as in point. In that case it appeared that on the 18th day of December, 1888, the defendant, the Connecticut Mutual Life Insurance Company, issued a policy of insurance on the life of Albert W. Clement to be paid to Margaret Clement, mother of said insured, or her legal representative, thirty days after due notice and satisfactory evidence of the death of the insured. The mother died in the lifetime of the insured, and upon the death of the insured his executor claimed the amount of the insurance while the insurance company contended that the money was payable to the legal representatives of Margaret Clement. The Court, in sustaining a demurrer on the part of the insurance company, held (p. 113) that if it had been the intention to pay the executor of the insured the policy could have provided "that the money should be paid to Margaret Clement, if living, and if not, to the legal representatives of the assured, and when we find that instead of so providing it was made payable to Margaret Clement 'or

her legal representatives' it is difficult to understand how it can be construed to mean his executor or administrator.''

In the case at bar the insurance policies specifically provided that in the event of the death of the beneficiary before the insured the interest of such beneficiary should vest in the insured, and in each of said policies the right to change the beneficiary was reserved by the insured.

The appellant refers to the insurance code adopted by the State of Colorado and construed by the Circuit Court of Appeals of the Tenth Circuit in the case of *Cannon* v. *Nicholas,* 80 F. 2d 934. In this case the Circuit Court of Appeals held that the wife, who was named beneficiary in an insurance policy, had an interest not subject to sale for her husband's taxes, but the Court refused to hold that the taxpayer (insured) had no interest in the policy which could not be made liable for taxes. From an examination of this case, it appears that Colorado has a statute similar to the one under consideration. In this case the Court in its opinion stated:

> ''The Second Circuit in a well reasoned opinion has held an identical statute to be one of exemption.''
> *In re: Messinger,* supra.

The Tenth Circuit further examined the Colorado law in the case of *Viles* v. *Prudential Insurance Co.,* 124 F. 2d 78. In this case the question arose as to whether a wife who was named beneficiary in an insurance policy had the right to bring an action with her husband against the insurance company for repudiating the policy under the Colorado law. The policy reserved to the insured the unqualified right to change the beneficiary. The Court granted a motion to strike the wife from the complaint on the grounds that she was neither a necessary nor proper party. The Court said:

> ''Under the law of Colorado, the beneficiary has a vested right, where the policy reserves in the insured the unqualified right to change the beneficiary, but, it is the nature of a mere expectancy and does not become

absolute and indefeasible until the death of the insured."

The Court further said:

"Here the right of the beneficiary was contingent both upon the insured predeceasing her and the insured not exercising the reserved right to change the beneficiary. Such a right in the beneficiary is too shadowy and uncertain to form the basis of action for damages for breach of contract. *It is a mere expectancy, of an unascertainable money value.*" (Italics supplied)

We submit that the cases of *Columbia National Life Insurance Co.* v. *Welch*, 15 F. Supp. 777, and *Kyle* v. *McQuirk*, 82 F. 2d 212, are authorities for the proposition that a beneficiary under an insurance policy has a mere expectancy and not a vested interest if the policy contains a provision giving the insured the absolute right to change the beneficiary.

6. Plaintiff's intestate's rights to proceeds of life insurance policies were contingent upon her surviving the insured, and upon her death prior to the death of the insured her interest ceased and became vested in the insured.

The policies provided that in the event of the death of the beneficiary her interest should vest in the insured. The Act of June 19, 1934, supra, merely provides that the lawful beneficiary shall be entitled to its proceeds and avails against the creditors and representatives of the insured. In the case at bar the beneficiary predeceased the insured and so the very purpose of the statute cannot be made effective as there is no longer any beneficiary whose rights should be protected. To say that under the Act in question the contracts of insurance were taken out for the benefit of the personal representatitves of the beneficiary named would not only do violence to the legislative intent but would result in a judicial re-writing of the entire Act, contrary to the adjudicated cases herein cited construing the New

York law. Furthermore, at the time the contracts of insurance were issued it cannot reasonably be said that the beneficiary's personal representatives were in the mind of the insured, but to the contrary the policies were obtained for the benefit of the wife of the insured, if she survived him, and in the event that she predeceased her husband, her interest vested in him. The beneficiary was to take only in the event she survived the insured, and having predeceased him her interest in the policies immediately ceased and became vested in the insured.

It is submitted that Congress in passing the Act in question did not intend, and certainly did not provide that the rights of a beneficiary under life insurance contracts could not be made dependent upon "survivorship" or such other lawful conditions as an insured might impose by and with the consent of the insurer.

7. Sec. 716, Title 35, District of Columbia Code (1940) became effective June 19, 1934, and it was not intended to disturb rights under insurance policies existing at that time.

The policies in question were issued on December 13, 1924, payable to Julia C. Buckley, wife of the insured, and each contained the following provision:

> "the insured may at any time, and from time to time 'change the beneficiary, provided this policy is not then assigned' * * *
> "*In the event of the death of any beneficiary before the insured the interest of such beneficiary shall vest in the insured, unless otherwise provided herein.*" (Italics supplied)

The Act of June 19, 1934, supra, provided in part:

> "When a policy of insurance whether heretofore or hereafter issued * * *"

The intent and purpose of this language, we submit, was to permit a future change of beneficiaries under preexisting

policies when no existing rights were affected, and to give to such beneficiaries the exemptions provided for in the Act. In the case at bar the insured had by contract provided that "in the event of the death of any beneficiary before the insured the interest of such beneficiary shall vest in the insured." This provision constituted a valuable vested right in the insured, and remained such until his death. Any legislative attempt to change this right could not withstand constitutional challenge, and the act in question should not be construed to affect existing contracts of insurance and/or the provisions thereof, particularly in respect to the rights reserved by the insured.

In speaking of retroactive legislation the United States Court of Appeals for this District said:

> "The rule is well settled that unless the contrary plainly appears a statute operates propsectively only; in other words, 'that a statute ought not to be construed to operate retrospectively in the absence of clear, strong, and imperative language commanding it;' and if a double sense is possible that which rejects retroactive operation must be selected.
>
> "A frequently quoted statement by Justice Story, describes a retroactive law as follows: It 'takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past. * * *,'"
>
> *Neild* v. *District of Columbia,* 71 U. S. App. D. C. 306, 314.
>
> See also *Speert* v. *Morgenthau,* 73 U. S. App. D. C. 70, 74.

In the case of *Schwab, Executor,* v. *Doyle,* 258 U. S. 529, 66 L. Ed. 752, the Supreme Court said: (p. 534, 535)

> "Retrospective laws are, indeed, generally unjust; and, as has been forcibly said, neither accord with sound legislation nor with the fundamental principles of the social compact. * * * There is certainly in it no declara-

> tion of retroactivity, 'clear, strong, and imperative,' which is the condition expressed in *United States* v. *Heth,* 3 Cranch, 398 * * * If the absence of such determining declaration leaves to the statute a double sense, it is the command of the cases that that which rejects retroactive operation must be selected."
>
> See also *Lewellyn, Collector,* v. *Frick,* 268 U. S. 252, 69 L. Ed. 934.

Because there was no declaration of retroactivity, "clear, strong and imperative" Section 55(a) of the New York State Insurance Law was held to have no retroactive effect on rights which existed at the time of its passage, and likewise we contend that the Act of June 19, 1934, should not be construed to impair the provisions of the insurance policies in the case at bar, and particularly the provision that "in the event of the death of any beneficiary before the insured the interest of such beneficiary shall vest in the insured."

See *In re: Messinger,* supra.

CONCLUSION.

Counsel has been unable to find any cases in the District of Columbia construing the pertinent code sections. Two early decisions in the District of Columbia indicate that where a revocable beneficiary dies before the insured and the insured fails to name a new beneficiary, the fund will be paid to the insured's estate or in accordance with the terms of the policy.

> *Masonic Mutual Relief Association* v. *McAuley,* 2 Mackey, 70
>
> *Washington Beneficial Association* v. *Woods,* 4 Mackey, 19

If the plaintiff's contention is correct that a beneficiary under the District of Columbia Code has a vested interest in insurance policies where the wife is named beneficiary in an insurance policy which contains a provision that in the event of her death before the insured her interest shall vest in the insured. we submit that no assignment of an insurance

policy could be made by the insured for the purpose of securing loans or surrendering the policy for the purpose of obtaining the cash surrender value thereof without the consent of such beneficiary. It is a common practice in the District of Columbia and in every State of the Union for insurance policies to be used as collateral security for loans, a practice which is engaged in to a great extent. Generally speaking, all the insurance policies used as collateral security for loans contain provisions permitting the insured to change the beneficiary. Lending institutions do not require the beneficiary to unite in the assignment of the policy. This was true in the case at bar, as will appear by reference to the statement of the case in Appellant's brief, on page 2, as follows: "Michael E. Buckley died in 1943 without having made any change in the beneficiary in either of the policies except that *he* (italics supplied) pledged one policy for a loan, which has long since been paid off and discharged."

The Acts quoted by the plaintiff and referred to herein, we submit, neither preclude nor prohibit the issuance of life insurance policies containing provisions permitting the insured to change beneficiaries, or providing that in the event that the beneficiary should predecease the insured that the interest of the beneficiary shall vest in the insured.

One of the provisions of the insurance policies in the instant case is: "In the event of the death of any beneficiary before the insured, the interest of such beneficiary shall vest in the insured unless otherwise provided for herein." This language is plain, clear and unequivocable, and thereunder the proceeds of the insurance policies belong to the estate of the insured as the beneficiary predeceased him.

We respectfully submit that under the law and decisions herein cited, the action of the Court in granting appellees' motion to dismiss and in dismissing the complaint was correct, and should be affirmed.

ARTHUR C. KEEFER,
Attorney for the Appellees.

REPLY BRIEF FOR APPELLANT

IN THE

United States Court of Appeals

DISTRICT OF COLUMBIA.

No. 9053

KARL KINDLEBERGER, Administrator of the Estate of Julia C. Buckley, *Appellant,*

v.

LINCOLN NATIONAL BANK OF WASHINGTON, ET AL., Executors of the Estate of Michael E. Buckley, *Appellees.*

Appeal from the District Court of the United States for the District of Columbia.

United States Court of Appeals
for the District of Columbia

FILED OCT 29 1945

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IN THE

United States Court of Appeals

DISTRICT OF COLUMBIA.

No. 9053.

KARL KINDLEBERGER, Administrator of the Estate of Julia C. Buckley, *Appellant,*

v.

LINCOLN NATIONAL BANK OF WASHINGTON, ET AL., Executors of the Estate of Michael E. Buckley, *Appellees.*

Appeal from the District Court of the United States for the District of Columbia.

REPLY BRIEF FOR THE APPELLANT.

This reply will be limited largely to analyses of the cases cited for the appellees.

1. The Act of March 3, 1901.

It is contended for the appellees that since this Act is substantially the same as the statutory provisions under the Annotated Code of Maryland, the decisions of the Maryland courts sustain the proposition that the statute applies only when the policy contains no provisions to the contrary, and to support that proposition cites *Pratt* v. *Hill,* 124 Md. 252, 92 A. 543. In that case neither the policy, nor any substitute, was in the record and the court had no means of knowing what provision, if any, it contained as to payment

in the case of the death of the beneficiary, but the court declared that it fully protected the amount of insurance due a wife from the claims of the *representatives* of her husband or any of his creditors.

However, the court further said, as quoted and italicized in appellees' brief (p. 5):

> "But notwithstanding that provision of the Code the policy or bylaws may make other provisions and in that case, of course Section 10 would not apply."

The italicized language quoted shows that it is flagrantly *obiter dicta* since the policy was not in the record and no provision of it was being considered. The court's statement that the applicable provisions of the statute did not apply in event the policy or bylaws made other provisions, was in no way necessary to the decision of the case.

However, the decision of the Maryland court is cited to sustain the proposition that where there is a conflict between the provisions of the policy and the provisions of the statute, the policy provisions govern. This is in direct conflict with *N. Y. Life Insurance Co.* v. *Craven,* 178 U. S. 389, 398, upholding the Missouri courts to the effect that in any conflict between the contract and the statutory laws regulating such contract, the contract must yield to the statute. See also *Equitable Life Insurance Co.* v. *Clements,* 140 U. S. 226. It is again pointed out, however, that the Maryland court did not consider the provisions of any Act similar to the subsequent Act of June 19, 1934.

It is further contended in the brief for the appellees that *Rosman* v. *Travelers' Insurance Co.,* 127 Md. 689, 96 A. 875 supports the proposition that the Act of March 3, 1901, did not create a vested right in the wife to the proceeds of life insurance policies where the husband reserves the right to change the beneficiary at any time. The *Rosman* case did not discuss or cite the Maryland statute similar to the Act of 1901, but merely followed the general rule that in the absence of statute, when the right was reserved to change the bene-

ficiary, the named beneficiary had only an estate in expectancy. This was the doctrine of *Cohen* v. *Samuels,* 245 U. S. 50, and in the absence of statute, is undoubtedly the rule.

We contend, however, that the rights of the beneficiary under the statutory law of the District of Columbia "did not rest upon contract but upon a legislative grant by way of exemption from a claim of creditors of an insurance fund created by the husband's annual appropriation or investment of his money." *In the Matter of Thompson,* 185 N. Y. 36, 40, 76 N. E. 870, 871; *Kittel* v. *Domeyer,* 175 N. Y. 205, 67 N. E. 433, 435, cited in the brief for appellant.

2. The Act of June 9, 1934, is Not Retroactive.

Counsel for the appellees cite various New York cases as construing Section 55-a of the state insurance law of March 31, 1927. In no case did any court consider the provision which provides that the lawful beneficiary:

> "other than the insured * * * or his executors or administrators shall be entitled to its proceeds and avail against the creditors and representatives of the insured * * * whether or not the right to change the beneficiary is reserved or permitted and whether or not the policy is made payable to the person whose life is insured if the beneficiary * * * shall predecease such person."

If this plain language means what it says, then there is no room for construction.

The words of the statute, "are presumed to be used in their ordinary sense and with the meaning commonly attributed to them," *U. S.* v. *Public Utilities Com. of the D. C.* (decided Sept. 24, 1945) Advance Sheet p. 5, citing *DeGanay* v. *Lederer,* 250 U. S. 376, 381; *Old Colony Railroad* v. *Comm.,* 284 U. S. 552, 560; *U. S.* v. *Stewart,* 311 U. S. 60, 63; *Deputy* v. *duPont,* 308 U. S. 488, 493.

The purpose of the statute is clear. The Act of March 3, 1901, provided that life insurance policies maturing,

> "on or after January 1, 1902 * * * taken out for the benefit of the wife or children * * * shall be vested in such wife or children * * * free and clear of all claims of the creditors of such insured person"

and

> "if the wife shall die before her husband the amount of such insurance may be payable after her death to the children or descendant for their use."

This statute was designed to protect the wife and children in the proceeds of insurance policies as against the claims of creditors. But thereafter insurance policies were considered by the courts which reserved the right of the insured to change the beneficiary and providing that in case the beneficiary predeceased the insured the interest of the beneficiary should vest in the insured, and the distinction insisted upon for the appellees in this case, was drawn between those policies containing these reservations and those which did not.

The quoted provisions of the Act of June 19, 1934, were designed to meet these judicial decisions and in terms to nullify these policy reservations, as essential to protect the beneficiary and her estate from the claims of creditors of the insured.

Chatham Phoenix National Bank v. *Crosney,* 251 N. Y. 189, 167 N. E. 217 is largely quoted in the brief for the appellees. The appellees can find no comfort in the language quoted, for the court said:

> "Certainly when the Legislature decided that the lawful beneficiary or assignee of a policy, effected by another on his own life, is entitled to the proceeds of the policy against the creditors of the insured, whether or not the right to change the beneficiary is reserved or

> permitted, we may not reasonably hold that the Legislature intended that an exception must be made in favor of the creditor of the insured against the wife."

If we may paraphrase this language, we say that certainly when the Legislature decided that the lawful beneficiary, or her representative, is entitled to the proceeds of a policy against the representatives or creditors of the insured, whether or not the right to change the beneficiary is reserved or permitted and *whether or not the beneficiary predeceases the insured,* we may not reasonably assume that the Legislature, in the face of the language used, intended that an exception must be made in favor of the representatives or the creditors of the insured against the wife's estate, *when the wife predeceases the insured.*

In 1918 the Surrogate's Court in New York decided *McGowin Etc.* v. *Menken Etc.*, 233 N. Y. 509, 5 A. L. R. 794, 119 N. E. 877, cited for the appellees. This was 9 years prior to the enactment of Section 55-a of the Insurance Code. Both the insured and the beneficiary in that case died in a common disaster and the only question discussed was as to whether or not there was a presumption that one survived the other.

This was followed by *In Re. Valverde's Estate,* 265 N. Y. S. 485, 1933, 195 N. E. 229, another case of death by common disaster, and the *McGowin* case was cited and followed, the court holding that the right of the beneficiary was conditionally vested and would continue until her death "before the insured was demonstrated." This was followed by *In Re: Burza's Estate,* 279 N. Y. S. 90, and *Morgan* v. *Sachett,* 16 N. Y. S. 2, 583.

All of these decisions were by the Surrogate's Court and the statute and the Section 55-a of the Insurance Code was not discussed or cited.

The remaining New York case cited for the appellees is *In Re: Czarniak's Estate,* 251 N. Y. S. 536. In that case the court refused to discuss the provisions of Section 55-a of the

New York Code on the ground that its provisions were not retroactive. This is the only New York case cited for the appellees in which this section of the Insurance Code is referred to, and it is clear that it was not analyzed and construed in that case because the Surrogate held that the law was not retroactive and was therefore not applicable.

That case was decided by the Surrogate in 1931. In 1934 the New York Court of Appeals in *Addiss* v. *Selig,* 264 N. Y. 274, 190 N. E. 490, 92 A. L. R. 1384, cited in the brief for the appellant, differentiated between the application of the statute to the case of creditors whose claims were in existence at the time of the enactment of the statute and its application to pre-existing policies without affecting pre-existing creditors, and said:

> "This legislation was prospective in all particulars except for the one express reservation—its application to pre-existing policies. It does not apply to pre-existing claims or creditors." (A. L. R. 1387)

It is clear therefore that the statement of the court in the *Czarniak* case that it was not applicable because retroactive, is not in accord with the later decision in the *Addiss* case, that:

> "This statute may be read so as to apply to pre-existing policies without affecting pre-existing creditors" (p. 1386).

Further, the provision that the personal representative of the wife shall be entitled to the proceeds of the policy if the wife predeceases her husband, operates *in futuro* upon the proceeds of an unmatured policy, and is thus not retroactive.

It seems unnecessary for two reasons to discuss the cases cited for the appellees to sustain the proposition that a statute will not be construed retroactively unless there is a clear and imperative declaration of retroactivity in the statute, (1) the Act of June 19, 1934, is specifically made applicable to all policies "whether heretofore or hereafter

issued'' and, (2) the application of the statute *in futuro* to the proceeds of unmatured policies and the funds created by annual appropriations and premiums thereafter paid, is not retroactive.

In any event, however, the regulation of the insurance business in the District of Columbia is a legitimate end of the legislation of Congress, and the statute is reasonable and appropriate to that end. Even, therefore, if this statute could be construed to affect incidentally the contract between the insured and the insurance company, ''the question is not whether the legislative act affects contracts incidentally or directly or indirectly, but whether the legislation is addressed to a legitimate end and the measures taken are reasonable and appropriate to that end.'' *Home Building & Loan Assoc.* v. *Blaisdell,* 290 U. S. 398, 438.

In this last case, Chief Justice Hughes makes a complete review of the power of the Legislature to incidentally impair the obligation of contracts and there can be no doubt under the cases there cited that even if the Acts under consideration here could be held to be retroactive, the power of Congress to enact the legislation is unquestioned.

3. The Vested Right of the Wife.

We have no quarrel with the statement that the right of the beneficiary in the case at bar was conditionally vested. Under the statute there were only two conditions that would divest this right, (1) the affirmative act of the insured in assigning the policy, or (2) a like act changing the beneficiary. Neither of these conditions are present.

The brief for the appellees cites a number of cases to support the proposition that the Federal courts quite generally draw a distinction between the right of the beneficiary where the insured does not reserve the right to change the beneficiary, and where the insured reserves such right. All of these cases follow *Cohen* v. *Samuels, supra,* cited in the brief for the appellant (p. 8). This case and the cases following it generally did not consider such a local statute regulating

life insurance as the Acts in question here and as Section 55-a of the New York Life Insurance Code.

Typical of the cases cited for the appellees is *Andrews* v. *Andrews,* 97 Fed. 2d 485. This was a suit to determine the ownership of the proceeds of three policies made payable to the wife who thereafter was divorced with a property settlement agreement. The husband had remarried and died, and the question was whether or not under the property settlement the first wife, as beneficiary named in the policy, was precluded from asserting ownership in herself. The court held that upon the death of the husband without changing the beneficiary, the right vested in the wife. The syllabus of the case is as follows:

> "Where life policies reserved to insured right to change beneficiary, the beneficiary, in absence of any local statute or state decision to contrary, had no vested right in them until death of insured."

In the case at bar, we insist there is not that absence of a local statute regulating life insurance policies, the lack of which was pointed out in the *Andrews* case. None of the Federal cases cited for the appellees, other than the *Andrews* case, considered the rights of the named beneficiary after the death of the husband, and none of them discussed or analyzed any local statute on the subject.

Viles v. *Prudential Life Insurance Co.,* 124 Fed. 2d 78, is cited as holding that under the Colorado statute the wife had no vested interest but "a mere expectancy of an unascertainable money value." This was a suit by the husband, the insured, and the wife, the beneficiary, to recover damages for an alleged repudiation of a contract of insurance. The Insurance Co. filed a motion to strike the beneficiary as a party and, in sustaining this motion, the court used the language quoted in appellees' brief on the ground that the right to recover the present worth of the benefits for wrongful repudiation was clearly in the insured.

The court may have been right in holding that the right of the insured by affirmative act to change the beneficiary made it unnecessary for the wife to be made a party to any suit to recover damages for repudiation, but the question of whether or not the death of the insured without changing the beneficiary, where the beneficiary predeceased the insured, deprived the beneficiary's estate of the proceeds of the policy under the Colorado law, was not before the court for determination. Indeed while the court refers to the law of Colorado, it does not discuss it in any particular. The court's statement that under the law of Colorado the beneficiary had a vested right but it was in the nature of a mere expectancy, is self-contradictory. A right cannot vest and at the same time be merely expectant.

In *Curtis* v. *Maryland Baptist Union Assoc.*, 5 Atl. 2d 836, 121, A. L. R. 1516, 1523 the court said:

> "And the word 'vest' as used in the law of property 'signifies the fixation of a present right to the immediate or future enjoyment of property.' *Safe Deposit & Trust Co.* v. *Sheehan,* 169 Md. 93, 107, 179 A. 536, 543."

The only possible construction of the statute involved here is that the wife had a vested right in these policies subject to be divested only by assignment or by changing the beneficiary during the life of the husband.

Respectfully submitted,

LESLIE C. GARNETT,
Attorney for the Appellant.

United States Court of Appeals

DISTRICT OF COLUMBIA

No. 9053

KARL KINDLEBERGER, Administrator of the Estate of JULIA C. BUCKLEY,

Appellant,

against

LINCOLN NATIONAL BANK OF WASHINGTON et al., Executors of the Estate of MICHAEL E. BUCKLEY,

Appellees.

AMICUS CURIAE'S BRIEF IN SUPPORT OF APPELLEES' APPLICATION FOR A REHEARING

United States Court of Appeals
for the District of Columbia
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United States Court of Appeals

DISTRICT OF COLUMBIA

KARL KINDLEBERGER, Administrator of the Estate of JULIA C. BUCKLEY, Appellant, against LINCOLN NATIONAL BANK OF WASHINGTON et al., Executors of the Estate of MICHAEL E. BUCKLEY, Appellees.	No. 9053

AMICUS CURIAE'S BRIEF IN SUPPORT OF APPELLEES' APPLICATION FOR A REHEARING

Life Insurance Association of America and National Association of Life Underwriters, in accordance with leave granted by this Court by its order of May 24, 1946, respectfully submit this brief in support of appellees' application for rehearing.

Statement as to Amicus

The following statements made in the application for leave to file the within brief are repeated for the convenience of the Court:

Life Insurance Association of America is an organization composed of ninety United States and Canadian legal reserve life insurance companies. Its member companies have over 85 percent of the insurance in force in all United States and Canadian companies, and do business in all

States and the District of Columbia. This organization was formed in 1906 as The Association of Life Insurance Presidents.

National Association of Life Underwriters, founded in 1890, is an organization of more than 40,000 men and women engaged in the sale and service of life insurance in the forty-eight States and the District of Columbia. Two hundred fifty-five of these members are engaged in the service of life insurance in the District of Columbia.

Statement

This is an appeal from an order made by Judge McGuire of the District Court of the United States for the District of Columbia on the 15th day of May, 1945, dismissing the complaint herein. Argument was had on November 14, 1945. On April 29, 1946, the order of the District Court was reversed by a two to one decision of this Court, the majority writing an opinion by Hon. Wilbur K. Miller, J., Judge Prettyman dissenting.

The Issue Involved

is the right to death benefits under two life insurance policies. Appellees, executors of the insured, claim these benefits under the terms of the contract. Appellant, administrator of the predeceased beneficiary, claims under District of Columbia Code, Section 35-716. The question is whether that section overrides the policy provisions. The Court has so far agreed with appellants.

Facts

Appellant is the Administrator of the Estate of the late Julia C. Buckley who died October 3, 1935, intestate. Appellees are the Executors of the Estate of the late Michael E. Buckley, the husband of Julia. He died on December 8,

1943, more than eight years after his wife. New York Life Insurance Company, of New York, insured Michael E. Buckley by its policies numbered 8937646 and 8937647 for $10,000 and $5,000 respectively. These policies matured by his death in the amounts, respectively, of $11,370.20 and $5,685.11, which sums are now held by the appellees pending the determination of this action.

Photostatic copies of the two policies, attached as Exhibits "A" and "B" to the complaint, show that upon issuance, both policies provided that "upon receipt of due proof of the death of Michael E. Buckley, the Insured", the company would pay the proceeds "to Julia C., wife of the Insured * * * Beneficiary (with the right on the part of the Insured to change the Beneficiary in the manner provided in Section 7)".

Section 7 of both policies was entitled "Other Benefits and Provisions". The pertinent clause of Section 7 reads as follows:

> *"Change of Beneficiary.—The Insured may at any time, and from time to time, change the beneficiary, provided this Policy is not then assigned.* Every change of beneficiary must be made by written notice to the Company at its Home Office accompanied by the Policy *for indorsement of the change thereon by the Company, and unless so indorsed the change shall not take effect.* After such indorsement the change shall relate back to and take effect as of the date the Insured signed said written notice of change whether the Insured be living at the time of such indorsement or not, but without prejudice to the Company on account of any payment made by it before such indorsement. *In the event of the death of any beneficiary before the Insured the interest of such beneficiary shall vest in the Insured, unless otherwise provided herein."* *

Policy No. 8937647 (the $5,000 policy) remained unchanged. Policy No. 8937646 (the $10,000 policy) was

* Emphasis throughout this brief supplied by the writer, unless indicated otherwise.

changed after the death of the beneficiary. The "Brief for Appellant and Joint Appendix", on page 8 shows the following:

REGISTER OF CHANGE OF BENEFICIARY

NOTE.—No change of Beneficiary shall take effect unless endorsed on this Policy by the Company at the Home Office.

Date of Request	*Beneficiary*	*Indorsed by*
July 15, 1937	The Perpetual Building Association, Washington, D. C.	(Signature illegible) Secretary

The complaint in paragraph 7 contains the statement that Policy No. 8937646 "had theretofore been assigned to the Perpetual Building Association, the loan for which said policy was security had been fully paid off before the death of the insured, * * * ".

This is an obvious error. Perpetual Building Association was a beneficiary, not an assignee. Needless to say, this Court must ignore the pleader's mere conclusion and accept the facts as shown by the exhibit.

POINT I

The statute involved.

A

The statute involved is District of Columbia Code Title 35, Section 716, the pertinent part of which reads:

> "When a policy of insurance, whether heretofore or hereafter issued, is effected by any person on his own life or on another life in favor of some person other than himself having an insurable interest therein, or, except in cases of transfer with intent to defraud

> creditors, if a policy of life insurance is assigned or in any way made payable to any such person, *the lawful beneficiary or assignee thereof other than the insured or the person so effecting such insurance, or his executors or administrators, shall be entitled to its proceeds and avail (sic) against the creditors and representatives of the insured* and of the person effecting such insurance *whether or not the right to change the beneficiary is reserved or permitted, and whether or not the policy is made payable to the person whose life is insured, if the beneficiary or assignee shall predecease such person* * * *."

Be it noted that Section 35-716 refers to each and every person who may be named as beneficiary in a life policy—marital or blood relationship is not required. Thus, Section 35-716 differs sharply from District Code Section 30-213, set forth in full at page 5 of the opinion, which lists the classes of beneficiaries to which it applies, while, as just stated, Section 35-716 applies to any person the insured may name in his policies as the payee of the death benefits, be the relation between them near or far or nonexistent.

As stated by the Court at page 3, the statute "was largely copied" from Section 55a of the Insurance Law of New York enacted in 1927 and since "rewritten as § 166 of the Insurance Law of 1939". When that New York statute was first construed by the Court of Appeals of New York, that State's highest court, in 1929, the Court said of it in *Chatham Phenix National Bank and Trust Co.* v. *Crosney,* 251 N. Y. 189, 197, 167 N. E. 217, 219:

> "The Legislature was dealing primarily with the *conflicting rights,* on the one hand, of creditors, or personal representatives of a person, whose life is insured, and, on the other hand, of a beneficiary of the policy, to an insurance fund created by the appropriation of moneys of the insured for the payment of premiums."

Thus, in the opinion of the New York Court, the statute was an exemption law pure and simple and not a statute regulating the distribution of insurance moneys.

Almost identical or similar statutes in other States have likewise been construed as exemption statutes. See, for instance, Massachusetts, Sec. 125, Ch. 175, G. L. 1932; am'd Ch. 42, Laws 1933, as construed in *Bailey* v. *Wood,* 202 Mass. 562, 89 N. E. 149; and Pennsylvania, Sec. 517, Title 40, Purdon's St. (1930), as construed in *In re Lang,* 20 Fed. (2d) 236.

It is a well known rule of construction that in construing a statute adopted from another State, courts will be persuaded as to the statute's meaning by interpretations of the highest court of that State.

The title of the District Code section, the same as that of the New York section, points to the same construction—"Rights of creditors and beneficiaries under policies of life insurance"—no reference here to the rights of the insured.

Two phrases in District Code Section 35-716 are of prime importance to our discussion. So as to avoid unnecessary repetition, we shall refer to the phrase "whether or not the right to change the beneficiary is reserved or permitted" as the "Change of Beneficiary" clause and

To the phrase "and whether or not the policy is made payable to the person whose life is insured, if the beneficiary or assignee shall predecease such person" as the "Reversion" clause.

B

Congress intended Section 35-716 to be an exemption law and not a statute of distribution

We shall assume the statute to be ambiguous, to say the least, as to the point involved herein. While this Court has held that the statute overrides the policy provisions, and awards, contrary to them, the death benefits to appellant rather than to appellees, still the construction is certainly possible that the statute is a mere exemption law and that

it does not purport to distribute rights between the insured and the beneficiary. In such a situation, it is well settled that the Court must choose that one of two possible constructions which the Legislature intended. No question, if the Legislature *wanted* to bar certain policy provisions, it could do so. Still, that does not settle the question whether it *wanted* such a result. This Court, however, did not discuss those considerations of public policy which in its opinion swayed the Legislature. We, therefore, crave leave to discuss at this point what we conceive to be the reasons which impelled Congress to enact District of Columbia Code Section 35-716.

We feel sure that in enacting Section 35-716, Congress intended to grant exemption to beneficiaries against the claims of the insured's creditors, and nothing else.

Death creates funds. That is the unique feature of Life Insurance. Said the Court in *Commissioner* v. *Keller* (U. S. C. C. A. 3rd) 113 F. (2d) 833, aff. 312 U. S. 543, 85 L. Ed. 1032:

> "The statute prescribes an *exemption prompted by a settled policy favoring the institution of life insurance.* The economic workings of that institution produce, upon premature death, the sudden '*springing up*' of a fund which rescues the insured's beneficiaries, who are ordinarily within the family circle, from want. This result is both salutary and unique. The fund insofar as it springs up comprises not only the accumulated interest on premiums paid (as is more or less the case with non-exempt savings bank accounts) but also a multitude of painlessly infinitesimal contributions from others who have escaped premature death. *Life Insurance is, therefore, the least costly and most equitable device yet evolved to preserve families in a wage-earning society from destitution.*"

Such a statute, said the Court in *Crossman Co.* v. *Rauch,* 263 N. Y. 264, 272, 188 N. E. 748, 750, is intended to effectuate a "humane purpose":

> "The spirit of the act should control its construction so that '*the humane purpose of preserving to the unfortunate or improvident debtor or his family the means of obtaining a livelihood and prevent them from becoming a charge upon the public.*' (Rickman v. Hanover (C. C. A.) 33 F. (2d) 873, 874) *may be effectuated.* Carpenter v. Herrington, 25 Wend. 370, 37 Am. Dec. 239; Surace v. Danna, 248 N. Y. 18, 161 N. E. 315. Cf. Matter of Pinals (D. C.) 38 F. (2d) 117, affirmed sub. nom. Smith v. Metropolitan Life Ins. Co. (C. C. A.) 43 F. (2d) 74."

District Code Section 35-716 certainly serves this "humane purpose". It is intended, we submit,

(a) To grant exemption against the insured's creditors only and not against the beneficiary's creditors. (There are exemption statutes awarding protection against the latter's creditors, as, for instance, New York Personal Property Law Section 15, but this case does not concern itself with any such statute.)

(b) To grant exemption to cash values and similar "proceeds and avails" under life policies during the *life* of the insured; during that period, the insured's *creditors* may attempt to reach the same. Let us mention, by the way, that exemption is granted to values available during the life of the insured because their seizure would prevent, of course, the "springing up" of the fund upon death; and

(c) To grant exemption to death benefits. These are not subject to direct attack by creditors but only *by the personal representatives* of the insured on behalf of such creditors. If any creditors exist, the representatives will necessarily act first of all on their behalf.

When in 1927 New York State enacted Insurance Law Section 55a, it aimed to correct three situations:

(1) There was a local situation arising out of New York Domestic Relations Law Section 52 under which a wife-beneficiary occupied a position inferior to every other

beneficiary. See *Chatham Phenix National Bank & Trust Co.* v. *Crosney,* 251 N. Y. 189, 167 N. E. 217, supra. This local situation is of no concern to this Court.

(2) There was a legal situation pointed up by *Cohen* v. *Samuels,* 245 U. S. 50, 62 L. Ed. 143. That case construed Section 70a of the Bankruptcy Act. Of it, the Court said at pages 52, 145:

> "By it the trustee of the bankrupt is vested by operation of law with title to all property of the bankrupt *which is not exempt,* all '(3) powers which he might have exercised for his own benefit, but not those which he might have exercised for some other person, * * * (5) property which, prior to the filing of the petition, he could by any means have transferred or which might have been levied upon and sold under judicial process against him: Provided, That when any bankrupt shall have any insurance policy which has a cash surrender value payable to himself, his estate, or personal representatives, he may, within thirty days after the cash surrender value has been ascertained and stated to the trustee by the company issuing the same, pay or secure to the trustee the sum so ascertained and stated, and continue to hold, own, and carry such policy free from the claims of the creditors participating in the distribution of his estate under the bankruptcy proceedings, otherwise the policy shall pass to the trustee as assets: * * *."

The Supreme Court construed the crucial part of the proviso, "any insurance policy which has a cash surrender value payable to" the insured, to refer not only to policies payable to the insured himself or "to his executors or administrators" but also to policies where, by change of beneficiary, he might make such cash surrender value so payable. The case, therefore, did not concern itself with policies "vested" in the beneficiary. As to any "vested" policy, the law was and is well settled that neither the trustee in bankruptcy of the insured nor any of his creditors may reach the policy values except, of course, in case of fraudulent transfer.

Thus, there was no need, when New York in 1927 decided to take action, to deal with any case where, because the beneficiary has vested rights, the policy was exempt from the insured's creditors anyhow.

On the other hand, correction of the situation as to policies subject to change of beneficiary was easy because the Supreme Court had held in *Holden* v. *Stratton,* 198 U. S. 202, 49 L. Ed. 1018, that under Section 6-A of the Bankruptcy Act, State exemption laws control the bankruptcy courts (see *Point I(D)*).

(3) As pointed out in papers heretofore submitted to this Court by the appellees and by amicus, creditors could "create a nuisance" by seizing a "reversion", that is, a right in the insured's estate to receive death benefits should the beneficiary predecease him (see *Point I(E)*).

Thus, beginning in 1927, States began to take action. New York enacted its Section 55a in 1927 in which it followed the Massachusetts statute, but incorporated the "Change of Beneficiary" clause of the Pennsylvania statute. The same action was taken by other States:

West Virginia—(Act approved March 15, 1929);
Maine—(Act approved April 4, 1929);
Colorado—(Act approved May 9, 1929);
Arkansas—(Ch. 76, Laws 1931);
New Hampshire—(Ch. 175, Laws 1931);
Rhode Island—(Ch. 1757, Laws 1931);
Wisconsin—(Ch. 425, Laws 1931);
North Carolina—(Act ratified March 23, 1931);
Delaware—(Act approved March 30, 1931);
Alabama—(Act 160, Laws 1932);
Georgia—(Act 336, Laws 1933), and

Finally, in 1934, Congress enacted District of Columbia—(Ch. V, Title 35, Sec. 716, 1934). That it intended that statute to be an exemption law is conceded by the appellant in a passage in his Reply Brief. We quote that passage at pages 23, 24.

C

How the New York and District statutes cope with the three situations

The statutes provide, stripped of all language not pertinent to our discussion:

(a) That the lawful beneficiary shall be *entitled* to the proceeds and avails of a policy, not absolutely,

(b) but merely *against* the creditors and representatives of the insured.

(c) whether or not the policy contains a "Change of Beneficiary" clause, and

(d) whether or not the policy contains a clause giving a "reversion" to the insured; and

(e) this statute is not applicable where the insured himself is the beneficiary (see *Point I(F)*).

Clearly, the word "against" limits the word "entitled". That is, the title of the beneficiary is not made good against all the world; it is made good only against two groups—the creditors and the representatives of the insured. It is not made good against the insured himself, for instance.

Thus, while this Court concluded that at least in the respect involved herein Section 35-716 gives to the beneficiary a position superior to that of the insured, we believe that the very reverse is true. The beneficiary's title is made superior to that of the insured's creditors, while he is alive, and superior to that of his representatives, after his death, but inferior to that of the insured himself. Creditors and representatives may not disturb the beneficiary's title, but the insured, under the "Change of Beneficiary" clause may wipe it out.

Now, this Court has in substance translated the statute to read, as applied to the controversy between these parties:

> "The beneficiary, or, should the beneficiary die before the insured, the beneficiary's executors or administrators, shall be entitled to the death benefits of a life policy against the representatives of the insured although the insured had directed that in case of such prior death, the death benefits shall be paid to his own estate."

And the Court has thus translated the statute, we think, because it took the section's reference to the "representatives of the insured" out of its setting in an exemption law.

A statute of distribution may readily award certain property to the estate of one person rather than to that of another. Not an exemption statute. In the latter, we must assume that the title of the beneficiary or of the beneficiary's estate is made superior to that of the representatives of the insured not in their capacity as distributors of the decedent's bounty but in their capacity as protectors of, and fiduciaries for, their decedent's creditors. After a man's death, his creditors must look to his representatives to enforce their claims. The Bankruptcy Act does not apply to "deceased insolvent debtors", 1 *Collier on Bankruptcy,* 13 Ed. 201; citing *Graves* v. *Winter,* Fed. Cases No. 5710; *Matter of Fackelman,* D. C. Cal. 248 Fed. 565.

The purpose of administration is (23 C. J. 996)

> "that the personalty of the deceased, together with income and profits, be properly collected, preserved, and duly accounted for, *that his just debts and the charges consequent upon his death and the settlement of his estate be paid and adjusted and that the residue of the estate be distributed among such persons and in such proportion as the will of the decedent, if there is one, or otherwise the statute of distribution, may prescribe.*"

Paramount, of course, is the collection of assets and the payment of debts. That is why

> "Administration is usually a necessity where a person dies leaving *unpaid debts* and property which may be made available to pay them, and the mere fact that there may be debts has been considered sufficient to render administration proper" (23 C. J. 999).

And that is why

> "It is a very general rule, established by positive statute in many of the United States, that *a creditor* of the deceased may be *appointed administrator* where no application for appointment is made within a suitable time by those having legal priority of right, * * *." (23 C. J. 1041, listing authorities in twenty-one states.)

Section 20-216, District of Columbia Code, likewise permits a creditor to apply for administration.

It is indeed very frequently the legal representative of the insured who in doubtful cases raises the question of title to life insurance proceeds against the beneficiary. See for instance, *Stoudt* v. *The Guaranty Trust Co.,* 150 Misc. 675, 271 N. Y. S. 409, aff. 241 A. D. 711, 269 N. Y. S. 997, and *Washington Beneficial Endowment Association* v. *George Wood,* 4 Mackey 19.

Thus, we may say that what the beneficiary gets under Section 35-716 is not at all a *vested* right; it is rather a superiority over the creditors of the insured, while he is alive, and over his representatives, after his death.

We have no doubt that Congress, in enacting District Code Section 35-716, when it made the beneficiary's title superior to that of the insured's representatives, had in mind the latter's function as fiduciaries for creditors and not their function as distributors of their decedent's bounty.

D

The "change of beneficiary" clause

As heretofore pointed out, the Supreme Court had held in *Cohen* v. *Samuels,* 245 U. S. 50, supra, that the trustee in bankruptcy of the insured might seize the cash value of

policies which, while naming a beneficiary, reserved to the bankrupt insured the right to change the same. In order to grant complete exemption to policies subject to change of beneficiary by the insured, the draftsmen of the New York statute adopted the language previously used by the State of Pennsylvania and discussed in full in *In Re Lang,* 20 Fed. (2d) 236, supra. That is, they inserted into their draft of the statute, which subsequently became Section 55a of the New York Insurance Law, the clause "whether or not the right to change the beneficiary is reserved or permitted."

E

The "reversion" clause

Under the law of Massachusetts, it had been held in *Blinn* v. *Dame,* 207 Mass. 159, 93 N. E. 601, 603, long before 1927, that where the insured had reserved a reversion, his creditors could reach such reversion, the Court saying:

> "* * * his right to have the same amount paid to his personal representative upon his prior decease (prior to the policy maturing as an endowment) if his children shall not survive him, *would have been available* to his creditors and would have passed under the assignment (citing numerous cases)." (Matter in parentheses supplied.)

Aware of this type of case, the draftsmen of the New York statute decided to grant complete exemption to policies that contained such a reversion. They therefore inserted into their draft of the statute, Section 55a of the Insurance Law, the phrase "and whether or not the policy is made payable to the person whose life is insured, if the beneficiary or assignee shall predecease such person." They assumed that because of the addition of this clause, it would be impossible for any creditor to assert claims against the policy on the ground that the insured had reserved to himself such a reversion.

F

Estate policies

No "humane purpose" is served where life insurance is carried for the insured's own purposes and not for the benefit of third persons. Policies payable to the estate of the insured, while exempt under the laws of some States (Louisiana, for instance), are not exempt under the Massachusetts and New York statutes and the statutes copied from them. The draftsmen of the New York statute intended the phrase "or his executors or administrators" to relate to the insured. They inserted the phrase because they wanted to make amply clear that estate policies were excluded from the exemption of the statute. In revising the statute in 1939, when it became part of present Section 166, all possibility of doubt was removed. The phrase was eliminated and a complete sentence inserted in its stead. The sentence is set forth in the margin.*

G

This Court's construction of Section 35-716 is contrary to public policy in that it may lead

(a) To undeserved losses by life insurance companies, and

(b) To expenses and delay suffered by beneficiaries.

The enactment of District of Columbia Code, Section 35-716, was merely the extension to another jurisdiction of a model and uniform creditors' exemption statute which had its modern birth in the 1927 New York statute and which in succeeding years was enacted in numerous jurisdictions.

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* "The person insured in a case under the first sentence of this subsection or the person effecting the insurance other than the wife of the insured in a case under the second sentence, and the person effecting the insurance under the third sentence thereof, or the executor or administrator of any such persons, or a person entitled to the proceeds or avails of such policy in trust for such persons shall not be deemed a third person beneficiary, assignee or payee."

It is a dangerous precedent, we submit, to hold that a reversion in favor of the insured's own estate is of no force in a life insurance contract. Let us point out some of the consequences that would flow from it. In policies such as the ones in the case at bar, where the insured has reserved the right to change the beneficiary, he may lack knowledge of the beneficiary's death or, knowing it, neglect or put off making the change. Then the insurance moneys would go where he did not want them to go, that is he would leave the moneys to strangers. Let it be remembered that under District of Columbia Code, Section 35-716, not merely wife and child, but any other person may be named as beneficiary. Thus, the beneficiary may be a business associate, an employee, a friend, a dependent. The death benefits being, as held by this Court, vested in the beneficiary and the beneficiary's estate means that in many cases a total stranger, being entitled to take in the estate of the beneficiary, would, contrary to the intention of the insured, become the object of his bounty.

Let us take another example. The Court's opinion states that since an insured is presumed to know the law, he is in a position to change the beneficiary after the death of the original beneficiary and thus prevent the effects opposed by appellees in this case. Leaving out of consideration, for the moment, those cases where a beneficiary's death is unknown to the insured or where an insured is relying upon the contract provisions to effectuate his intentions, we direct the Court's attention to the countless policies where an insured does *not* reserve the power to change the beneficiary. In practically all of such latter policies, there is a reversion to the insured's estate in the event the beneficiary predeceases him.

This Court's opinion would prevent such reversion because the insured is powerless to change a beneficiary in these cases. It is pointed out again that District of Columbia Code, Section 35-716, refers to *all* beneficiaries, not just to close relatives such as a wife, child, mother or

father. This is a disastrous and dangerous result never intended by Congress in the enactment of this statute. But this case, where the insured has not reserved the right to change the beneficiary and where, therefore, upon the death of the beneficiary, the policy is controlled by strangers, has an even more serious aspect. It is a well established principle of life underwriting that one must avoid creating interest in persons who benefit from the death of the insured rather than from his life. Cases have occurred again and again, as this Court knows, where such a financial interest in another's death has led to murder.

Again, there must have been many cases in the District of Columbia similar to the case at bar, that is where a designated beneficiary died before the insured and where the policy directed in such a situation payment to the insured's own estate. Within the period fixed by the Statute of Limitations in all such past cases, the estate of the beneficiary may, if so inclined, demand payment again from the insurance company, which, under the decision of this Court herein, would have no defense, the payment to the insured's estate being obviously no satisfaction of the beneficiary's estate's claim.

Furthermore, speaking prospectively, we may anticipate that certainly in the District of Columbia, and most likely in most of the twelve or thirteen States having in effect statutes analogous to District of Columbia Code, Section 35-716, insurance companies being aware of this danger of possible double liability, will in such a situation of necessity have to refuse payment. For the protection of the policyholders' moneys entrusted to their care, they will feel compelled in each such case to interplead the two estates. Thus, in the first type of cases, the insured companies will be subjected to undeserved loss, and in the second type of cases, the beneficiaries will find themselves subjected to delay and expensive litigation. (See the four affidavits by life insurance company officials printed in the appendix hereto.)

It is submitted that Congress, in enacting District of Columbia Code, Section 35-716, never intended that such

results would follow. There was no situation present regarding the proper distribution of insurance moneys pursuant to beneficiary clauses, which needed correction. Had there been, the hearings before the Congress would have reflected it. Since, however, there was no such demand for remedial legislation, is it not the more reasonable interpretation that it was the intent of Congress to enact *only* a creditors' exemption statute, thus extending to residents of the District who were beneficiaries the protection, for their policy values, of a model and uniform creditors' exemption statute; a statute interpreted *only* as such in the jurisdictions having similar statutes?

In Conclusion of Point I

We have shown, to the satisfaction of the Court, we hope, that Congress, when it copied New York Section 55a into District Code Section 35-716, had the "humane purpose" of exempting life insurance policies from creditors' claims.

That being so, Congress concerned itself with the possibly conflicting rights of beneficiaries and creditors under life policies and not at all with controversies between the estate of the insured and that of a predeceased beneficiary. We have also attempted to show that if District Code Section 35-716 be construed as nullifying every reversion that a policyholder may reserve to himself, should the beneficiary die before him, serious evils, litigation, manufactured claims, unnecessary expenses and delays to beneficiaries will necessarily result therefrom.

No reason occurs to us, nor does this Court suggest any, why Congress should have concerned itself, when it enacted the section, with the problem whether the beneficiary's or the insured's own estate get certain insurance moneys? Why dictate to policyholders in the District how they must leave their life insurance? Especially when, under Section 35-716, such a direction would apply to each and every beneficiary, be he a relative of the insured or not.

In *Mitchell* v. *Mitchell,* 177 Misc. 1050, 32 N. Y. S. (2d) 839, rev. 265 A. D. 27, 37 N. Y. S. (2d) 612, aff'd 290 N. Y. 779, 50 N. E. (2d) 106, the beneficiary of one life insurance policy involved was the insured's faithful secretary. We cannot believe, in spite of this Court's high authority, that Congress wanted, in such a case, had the secretary predeceased the insured, to give the money to her estate and to withhold it from the insured's own estate.

POINT II

The Court's opinion.

This Court has concluded, if we may take the liberty of abstracting its opinion:

I. That the antecedent of the phrase "or his executors or administrators" is the beneficiary so that the meaning of the statute is that "the lawful beneficiary or his executors or administrators, shall be entitled to the proceeds against the creditors and representatives of the insured" (p. 2 of Opinion) (see our *Point II(B)*).

II. That Section 35-716 "was largely copied" (p. 3) from Section 55a of the Insurance Law of New York and that a "somewhat similar statute has been in effect in Massachusetts since 1884" and, says the Court at the same page:

> "Yet counsel do not cite from either of those jurisdictions any case construing the statute with respect to a factual situation such as that presented in this case, nor has our own rather extensive search discovered authority from either state."

Or, to put the same thought in different language, in sixty-two years during which a similar statute was in effect in Massachusetts and in nineteen years during which such a statute was in effect in New York, no case

has arisen in either jurisdiction where court or counsel, in litigation between the estate of the insured and the estate of the predeceased beneficiary, has tried to apply either statute as a statute of distribution. [The single case, *In re Czarniak's Estate,* 140 Misc. 754, 251 N. Y. S. 536 (1931), in which the point was brushed aside by the Surrogate, makes all the more startling the absence of any reference to the section in the subsequent cases which were listed by Prettyman, J., at page 9, note 13, *In re Valverde's Estate,* 148 Misc. 49, 265 N. Y. S. 484 (1933); *In re Burza's Estate,* 155 Misc. 44, 279 N. Y. S. 90 (1935); and *Morgan* v. *Sackett,* 172 Misc. 855, 16 N. Y. S. (2d) 583 (1939); see also *Reiss* v. *Reiss,* 166 Misc. 274, 2 N. Y. S. (2d) 358 (1937); *Weisman* v. *Metropolitan Life Ins. Co.,* 7 N. Y. S. (2d) 565, aff'd 256 A. D. 914, 10 N. Y. S. (2d) 414 (1938); *Mitchell* v. *Mitchell,* 177 Misc. 1050, 32 N. Y. S. (2d) 839, rev. 265 A. D. 27, 37 N. Y. S. (2d) 612, aff'd 290 N. Y. 779, 50 N. E. (2d) 106 (1942), supra.]

The inference, we submit with due respect to the Court, is unavoidable that in both States bench and bar have considered the statute to be an exemption statute that has no relation to the issue involved in a case such as the one at bar.

Controversies between the estates of insured and beneficiary are not unusual; the standing and professional skill of the bench and bar in Massachusetts and in New York are high; they would have resorted to the section had there been any notion that it applied to such controversies.

III. On the other hand, in Kentucky the Courts have held that under a somewhat similar statute the phrase "his executors or administrators" relates to the beneficiary rather than the insured. But, says this Court, they have also held that such construction notwithstanding, the Kentucky statute gives the proceeds to the estate of the insured and not to that of the predeceased beneficiary in "cases in which the policy either (1) saves to the insured the right to change the beneficiary, or (2) as in the latest case, *Colovos' Admr.* v. *Gouvas* [269 Ky. 752, 108 S. W. (2d)

820] vests the interest of a deceased beneficiary in the insured himself" (pp. 3-4).

Thus, under Kentucky law, says this Court, the appellees rather than the appellant would have prevailed.

IV. The District statute, however, says this Court, "goes further than does Kentucky's" in that it contains the "Change of Beneficiary" and the "Reversion" clauses and in the presence of these two clauses, in the opinion of this Court, "the Kentucky court would have held its statute to be applicable even in those situations in which the policy reserved the right to change the beneficiary or gave its proceeds to the insured if the beneficiary died before him". (See our *Point I* for the reason why these two clauses were inserted in the statute.)

V. Furthermore, says this Court, in Kentucky "the interest of the beneficiary has not become *vested*" which "is but *another way* of saying that the Kentucky statute does not apply if the policy provides that the beneficiary may be changed, or if the policy provides that the prior death of the beneficiary will automatically give the proceeds to the insured" (p. 4). It is otherwise, says the Court, in the District of Columbia because of the provisions of Section 30-213, which, in a case where a policy is made payable to "the *wife* or children * * * or any *creditor*" directs that the policy "shall be vested in such *wife* or children * * * or *creditor* free and clear from all claims of the creditors of" the insured. We shall discuss such vesting in our *Point II(A)*.

We are not discussing herein the final part of this Court's opinion which holds Section 35-716 to be applicable to policies in existence before its enactment as we fully agree with that conclusion of the Court.

With a great deal of respect, we suggest that this Court's logical and scholarly opinion went astray because of this Court's basic misconception—it overlooked the main purpose of the statute as an exemption law, as a law to pro-

tect beneficiaries against the creditors of the insured. It accepted the statute, although there appears to have been no need for it as such, as intended to cut down the rights of the insured's own estate in his life insurance policies and to enhance the rights of the estate of a predeceased beneficiary—whether such predeceased beneficiary be related to the insured or not.

We have devoted our *Point I* to the exposition of our thoughts on the statute's history and purpose.

We now propose to conclude by adverting to two concepts which this Court accepted. These are:

(a) The meaning of the word "vested" in the District Code Section 30-213, and

(b) The allocation by this Court of the words "or his executors or administrators" to the beneficiary rather than to the insured.

A

"Vesting" under D. C. Section 30-213

This section provides that

> "All policies of life insurance upon the life of any person * * * which have been * * * taken out for the benefit of * * * the *wife* or children * * * or any *creditor,* shall be *vested* in such *wife* or children * * * or *creditor* free and clear from all claims of the creditors of such insured person."

This Court concludes at page 5:

> "So, if the test of the statute's applicability be based on whether the deceased beneficiary had acquired a vested interest in the policy, it is immediately seen that in the District of Columbia there can be no question as to whether a wife acquires a vested interest when she is named beneficiary."

From the same language, it is also "immediately seen that in the District of Columbia there can be no question as to whether a *creditor* acquires a vested interest when it is named beneficiary". Yet Perpetual Building Association, named as beneficiary in the larger of the two policies involved herein, claimed no part of the proceeds. Nor did the insurance company or the parties hereto assume its interest to be "vested".

As a matter of fact, this Court, in the paragraph at page 4 immediately preceding its quotation from Section 30-213, pointed out that to say that in Kentucky the deceased beneficiary had not acquired a vested interest in the policy is "*but another way* of saying that the Kentucky statute does not apply if the policy provides that the beneficiary may be changed, or if the policy provides that the prior death of the beneficiary will automatically give the proceeds to the insured".

Thus, "vested", according to this Court, means no more than the absence of a "Change of Beneficiary" or "Reversion" clause.

Again, the Courts in the District of Columbia construed the word "vested" in District Code Section 30-213 to mean nothing but the absence in the policy involved of a "Change of Beneficiary" or a "Reversion" clause. Appellant himself says so in his reply brief. At page 4, he quotes from the Act of March 3, 1901 (meaning thereby Sections 30-213 and 30-214 enacted on that day). Of that Act, he says:

> "*This statute was designed to protect the wife* and children *in the proceeds* of insurance policies as *against the claims of creditors.* But thereafter insurance policies were considered *by the courts* which reserved the right of the insured to change the beneficiary and providing that in case the beneficiary predeceased the insured the interest of the beneficiary should vest in the insured, *and the distinction insisted upon for the appellees in this case, was drawn between those policies containing these reservations and those which did not.*

> "The quoted provisions of the Act of June 19, 1934,* *were designed to meet these judicial decisions* and in terms to nullify these policy reservations, as essential to protect the beneficiary and her estate from the claims of creditors of the insured."

Thus, according to appellant, the Courts made, under Section 30-213a, a distinction between *vested* policies and policies *not vested* because of the presence in them of a "Change of Beneficiary" or "Reversion" clause. And Section 35-716 was enacted "to meet these judicial decisions". The practical acts of the insurance company, of Perpetual Building Association and of the parties hereto and appellant's express concession, show that the term "vested" in the 1901 Act has not a technical conveyor's meaning. "Vested" is there used in the popular sense.

For instance, (2d) The New Century Dictionary, 1942 Ed. 2141, defines the word "to vest" as

> "to cover or surround as if with, or like, a garment; also, to invest or endow (a person, etc.) with something, esp. with powers, functions, etc. (as, 'He . . . *vested* me with full authority over his household', Smollett's 'Humphry Clinker', Oct. 26; 'Halifax . . . was *vested* with the entire patronage and correspondence belonging to American affairs', Bancroft's 'Hist. of the U. S.', Amer. Revolution, i.4); * * * (* * * 'The government was *vested* in fifty-six senators', Hallam's 'Europe during the Middle Ages', iii.2); * * *."

Again, we think it is significant in this connection to consider the fact that Perpetual Building Association was a *beneficiary* and not an *assignee* of policy No. 8337646 at the time when insured died. It being a creditor of the insured, it had, under Section 30-213, a "vested" right in the death benefits. Just the same, it made no claim to them. And the life insurance company paid these death benefits to the appellees without fear of any claim by Perpetual Building Association. Thus, the practical construction of all parties of Section 30-213 was that the word

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* Section 35-716.

"vested" gave no "vested right" to the creditor and that it could be divested by repayment of its loan during the lifetime of the insured. Nobody insisted on the formality of his changing the beneficiary again.

In other words, the word "vested" was not taken by these experienced parties in the technical conveyor's sense but in its popular sense.

To them, Section 30-213 which says that

> "All policies * * * shall be vested in such * * * creditor, free and clear from all claims of the creditors of such insured person"

means nothing but what the Kentucky statute (Carroll's Kentucky Statute, Sec. 655, Court's Opinion, p. 3) means when it directs that a beneficiary

> "shall be entitled to its proceeds against the creditors and representatives of the"

insured.

B

The allocation of the phrase in the section "or his executors or administrators"

We have pointed out in our *Point I*(F) the understanding of this phrase in New York, and its subsequent clarification when Section 55a of the Insurance Law was rewritten as Section 166.

If, however, this Court should continue convinced that in District Code Section 35-716 the word "beneficiary" and not the word "insured" is the antecedent of the phrase "or his executors or administrators", then we submit that the phrase should be limited as was done by this Court in *Washington Beneficial Endowment Association* v. *George Wood,* 4 Mackey 19, supra. It was there held, in substance, that the designation, in an insurance policy, of a beneficiary "or her legal representatives" is not a gift to the legal representatives of the beneficiary, should she predecease the

insured. The phrase means nothing more than that, if the beneficiary has *survived* the insured but should die before receiving the proceeds, that in such case "her legal representatives" should take. We quote the following from the opinion of Mr. Justice Wylie, pages 27, 28, 29, the emphasis being supplied by the Court:

> "In the analogous case of a lapsed legacy, the rule laid down in the books is this, as I shall read from the first volume of Roper on Legacies, page 466:
>
> "'The well-established rule respecting lapse through the death of the legatee in the testator's lifetime, in cases not affected by the above statute will not be varied by the bequest being made to the legatee, his *executors* or *administrators*. For such words are of no importance, inasmuch as those persons would have taken the legacy in succession and by representation, if it had been vested in the legatee, whether expressly named by the testator or not; but since the legatee's death before the testator, prevented his ever taking any interest in the bequest, it follows that his executors or administrators can by no possibility make a title to that which never rested in the testator. This is the principle of the rule, which equally applies to devisees of real as to bequests of personal estate; so that if lands were devised to A and his *heirs,* and he died before the devisor, leaving an heir living at the death of the testator, the heir could not make a title to the estate, because he was intended to take it in succession as representative of the devisee, but which was impossible from the accident of the latter dying before the devisor.'
>
> "Further, on the same subject, on page 467, the text says:
>
> "'Since then a legacy to A, his executors and administrators, will, as we have seen, lapse by his death before the testator, so will a legacy given to A and his *personal representatives;* for in each case the additional words are unnecessary and merely express what the law would have directed if the testator had been silent on the subject, viz., that if A survive the testator (an event which the gift implies

since no testator could be supposed to mean to give to any but those persons who shall survive him), and afterwards die before the legacy becomes payable, his personal representative shall receive it. Hence, it appears that the mere naming of the executors, administrators, or personal representatives of A is not inconsistent with the rule before mentioned respecting the lapse of legacies, and does not unequivocally show the testator's intention to substitute those persons in the place of *A* in the event of *A's* death before him.'

* * * * * *

"In this case we think that no parol evidence could have made the case any clearer than the circumstances upon the face of the transaction. The beneficiary was the wife of Daniel Spaulding Jones. He intended to leave this for her benefit after his death. The fact that she survived him was a fact which he had no contemplation of at the time. The paper did not provide for what did happen, and there is nothing in the case to show that there was any person who could take from her, or who was considered by him in the matter as taking in case of her death because she had no children, she had no distributees, no near relations. There is no evidence at all to show that there were any persons in the relation of distributees to the wife in whom he felt any interest at all."

POINT III

Appellees' petition for rehearing should be granted.

Respectfully submitted,

LAWRENCE A. BAKER,
Attorney for Amicus,
730 Fifteenth Street, N. W.,
Washington 5, D. C.

ALBERT HIRST, of the New York Bar,
HENRY R. GLENN, of the New York Bar,
of Counsel.

APPENDIX

Affidavit of Aetna Life Insurance Company

RALPH KEFFER, first being duly sworn, deposes and says:

1. That he is an Actuary for the Aetna Life Insurance Company at its Home Office at Hartford, Connecticut;

2. That the Aetna Life Insurance Company has about $20,500,000 of Ordinary Life Insurance in force under policies issued in and subject to the laws of the District of Columbia;

3. That all life insurance policies issued by said Company during the past twenty years contain a standard beneficiary provision substantially the same as the provision in the policy involved in Case No. 9053 in the United States Court of Appeals for the District of Columbia, entitled Karl Kindleberger, Administrator of the Estate of Julia C. Buckley v. Lincoln National Bank of Washington, et al;

4. That he estimates approximately 50% of the aforesaid insurance is written payable to a single designated beneficiary on the assumption that if the designated beneficiary dies before the insured the provisions of the policy whereby the interest of the beneficiary would vest in the insured would be controlling;

5. That in the settlement of claims on policies issued in the District of Columbia and in the numerous states having statutes similar to the statute discussed in the aforesaid Kindleberger decision, said Insurance Company has been governed by the express terms of its policies and has never considered that the statute referred to above had the effect of vesting the insurance in the estate of the beneficiary where the policy provides that the insurance shall vest in the estate of the insured.

RALPH KEFFER.

STATE OF CONNECTICUT, }
COUNTY OF HARTFORD, } ss.:

Before me personally appeared RALPH KEFFER, to me personally known, who subscribed the above affidavit in my presence and made oath to the truth of the contents thereof at Hartford, State of Connecticut, this 28th day of May, 1946.

THEODORA ELLSWORTH
Notary Public
My Commission Expires March 31, 1947

(Seal)

Affidavit of Connecticut Mutual Life Insurance Company

WARREN T. BLEASE, being duly sworn deposes and says:

1. That he holds the position of Assistant Secretary of The Connecticut Mutual Life Insurance Company of Hartford, Connecticut and has supervision over the Title Department of said Company which maintains the records having to do with ownership and beneficiaries of life insurance policies;

2. That the records of said Company show that it had in force, at the end of the year 1945, 3414 policies of life insurance totalling $12,106,481 on the lives of residents of the District of Columbia;

3. That he estimates, based on the records of said Company, that over 90% of these policies are payable under their terms to the Executors or Administrators of the Insureds in the event that individual beneficiaries (both primary and secondary) predecease the Insureds;

4. That he further estimates, based on the records of said Company, that approximately 40% of these policies are payable under their terms to the Executors or Administrators of the Insured in the event that single individual beneficiaries predecease the Insureds;

5. That where the named beneficiaries have predeceased the Insureds it has been the practice of the Company in the District of Columbia to pay the proceeds to the estates of the Insureds, in accordance with the provisions of the policies, rather than to the estates of deceased beneficiaries.

Further affiant sayeth not.

WARREN T. BLEASE.

STATE OF CONNECTICUT, }
COUNTY OF HARTFORD, } ss.:

Subscribed and sworn to before me this 27th day of May, 1946.

E. MILTON HUMES
Notary Public
My commission expires Apr. 1, 1949

(Seal)

Affidavit of Phoenix Mutual Life Insurance Company

The undersigned, B. L. HOLLAND, Vice President and Counsel of the Phoenix Mutual Life Insurance Company of Hartford, Connecticut, being duly sworn, does depose and say as follows:

The Phoenix Mutual Life Insurance Company has in force as of December 31, 1945, 1,751 policies representing $6,676,415 of insurance on the lives of residents of the District of Columbia. The great majority of such policies provide that in the event of death of all of the personal beneficiaries prior to the death of the insured the proceeds of the policies will be payable to the executor, administrator, or assignee of the insured. This Company has never considered that the exemption statute of the District of Columbia in any way affected the beneficiary designations in life insurance policies, but considered such statute to relate

solely to the rights of creditors and, based on such construction, has for many years made payment in accordance with the terms of its policies.

B. L. Holland.

Subscribed and sworn to before me
this 27th day of May, 1946.

Margaret M. Reardon
Notary Public
(Seal)

Affidavit of The Travelers Insurance Company

R. C. Dimon, being duly sworn, deposes and says:

1. That he is the Secretary of the Life Department of The Travelers Insurance Company whose office and post office address is No. 700 Main Street, City and County of Hartford, State of Connecticut.

2. That the Life Insurance Policies of The Travelers Insurance Company in force in the District of Columbia as of December 31, 1945 totaled in the aggregate $24,156,098.

3. Upon information and belief that of the total policies hereinabove mentioned at least 90% provide the proceeds shall be paid to the estate of the insured in the event that the named beneficiaries predecease the insured.

4. Upon information and belief that approximately 20% of said policies in the District of Columbia at the time of issuance have named a single beneficiary.

5. That in the past The Travelers Insurance Company has followed the practice of making payment of the Life Insurance proceeds in accordance with the provisions of the policies. Deponent verily believes that to do otherwise would in a great number of cases delay the payment of claims.

R. C. Dimon.

STATE OF CONNECTICUT, }
COUNTY OF HARTFORD, } ss.:

Hartford May 27, 1946

Personally appeared R. C. DIMON, signer and sealer of the foregoing instrument, and acknowledged the same to be his free act and deed before me.

H. I. TRASK
Commissioner of the Superior Court
for Hartford County